IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GREE, INC.,	)(	CIVIL ACTION NOS.
PLAINTIFFS,	)(	2:19-CV-70-JRG-RSP
	)(	2:19-CV-71-JRG-RSP
VS.	)(	
	)(	MARSHALL, TEXAS
SUPERCELL OY,	)(	SEPTEMBER 17, 2020
	)(	8:25 A.M.
DEFENDANTS.	)(	

TRANSCRIPT OF JURY TRIAL

VOLUME 11

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

08:23:47 P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Counsel, are you prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. MOORE: Good morning. Yes, Your Honor. My colleague, Mr. Rinehart, will come to the podium and do that.

THE COURT: All right. If you'll proceed, Mr. Rinehart.

MR. MOORE: Thank you.

MR. RINEHART: Good morning, Your Honor.

THE COURT: Good morning.

MR. RINEHART: GREE would like to admit PTX-2, PTX-5, PTX-72, PTX-73, PTX-142, PTX-561, PTX-566, PTX-600, PTX-690.

THE COURT: Thank you.

Is there any objection from the Defendant to that rendition?

MR. DACUS: No objection, Your Honor.

THE COURT: All right. Does the Defendant have a similar rendition to read into the record?

MR. DACUS: Yes, we do, Your Honor.

Mr. McMichael will read it in.

THE COURT: All right.

Mr. McMichael, please proceed.

Thank you, Mr. Rinehart.

MR. RINEHART: Thank you, Your Honor.

MR. MCMICHAEL: Good morning, Your Honor.

THE COURT: Good morning.

MR. MCMICHAEL: Supercell introduced the following exhibits from yesterday: DX-237, DX-1217, DX-1218, DX-1239, PTX-139, PTX-142, PTX-167, and PTX-480.

THE COURT: All right. Is there objection to that rendition by the Plaintiff?

MR. MOORE: No objections, Your Honor.

THE COURT: All right.

MR. MCMICHAEL: Thank you.

THE COURT: Thank you, Mr. McMichael.

Ladies and gentlemen, including both counsel and our guests in the gallery, I'm about to bring in the jury and proceed to give them my final instructions.

Following my final jury instructions, counsel for the parties will present their closing arguments. Let me make it clear to everyone present that the Court considers its final charge to the jury and counsel's closing arguments to be the most serious part of a very serious process.

08:28:29 Consequently, once I bring in the jury, I expect
08:28:34 everyone to sit quietly and respectfully. I don't want to
08:28:38 see movement. I don't want to hear extraneous noise. If
08:28:42 you need to get up and leave the courtroom for any reason,
08:28:46 do it now, not during the time -- or not during after --
08:28:50 after I've brought in the jury.
08:28:51 Is there anything from either Plaintiff or
08:28:54 Defendant before I bring in the jury?
08:28:56 MR. MOORE: No, Your Honor.
08:28:58 MR. DACUS: No, Your Honor.
08:28:58 THE COURT: All right. Each side has 40 minutes
08:29:04 for closing. Plaintiff must use at least 20 minutes in its
08:29:08 first closing.
08:29:09 With that, let's bring in the jury,
08:29:12 Mr. Fitzpatrick.
08:29:13 COURT SECURITY OFFICER: Yes, sir.
08:29:13 All rise.
08:29:15 (Jury in.)
08:29:15 THE COURT: Good morning, ladies and gentlemen.
08:29:45 Please have a seat.
08:29:51 Ladies and gentlemen of the jury, you've now heard
08:29:59 all the evidence in this case, and I will now instruct you
08:30:03 on the law that you must apply.
08:30:05 Before we go any further, let me make clear to you
08:30:10 that you are each going to have your own individual,

printed, hard copy of these final jury instructions that I'm about to give you orally, which means if you'd like to take notes while I give them orally, you may, but you will have a hard copy to review in case you would rather listen carefully and not make notes. Let me make that clear to you.

It's your duty to follow the law as I give it to you. On the other hand, ladies and gentlemen, and as I've said previously, you, the jury, are the sole judges of the facts in this case.

You should not consider any statement that I have made over the course of the trial or make during these instructions as an indication to you that I have any opinion about the ultimate facts in this case.

Now, you're about to hear closing arguments from the attorneys. Statements and arguments of the attorneys, I remind you, are not evidence, and they are not instructions on the law. They're intended only to assist the jury in understanding the evidence and the parties' competing positions and contentions.

A verdict form has been prepared for you. And you'll take this verdict form with you to the jury room when I instruct you to retire and deliberate on your verdict.

And when you have reached a unanimous decision or

agreement as to your verdict, you'll have your foreperson fill in the blanks in the verdict form, date it, sign it, and then return it to the Court Security Officer -- or notify the Court Security Officer.

Answer each question in the verdict form from the facts as you find them to be. Do not decide, ladies and gentlemen, who you think should win the case and then answer the questions to reach that result. Again, your answers and your verdict must be unanimous.

Now, in determining whether any fact has been proven in this case, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and you may consider the effect of all the exhibits received and admitted into evidence, regardless of who may have produced or presented those exhibits.

You, the jurors, are the sole judges of the credibility and believability of each and every witness and of the weight and effect to give to the evidence in this case.

Now, during the course of the trial, you've been shown documents with some portions that may have been redacted or blacked out. In those situations, you should not speculate about what may have been redacted or why it was redacted. Those redactions were approved by the Court

prior to when the trial began.

As I've told you previously, the attorneys in this case are acting properly as advocates for their competing parties and those parties' competing claims. And the lawyers have a duty to object when they believe evidence is offered that should not be admitted under the rules of the Court.

When the Court has sustained an objection to a question addressed to a witness, you are to disregard the question entirely, and you may not draw any inference from its wording or speculate about what the witness would have said if the Court had allowed them to answer the question.

On the other hand, if I have overruled an objection, then you're to treat the answer to the question and the question itself just as if no objection had been made, that is, like any other question and answer during the trial.

Now, at times during the trial, it was necessary for the Court to talk to the attorneys outside of your presence and hearing. In those cases, I asked you to retire to the jury room.

When this happens in a trial like this one, because there are things that sometimes arise that do not involve the jury, you should not speculate, ladies and gentlemen, about what was said during any discussions that

took place outside of your presence.

Now, there are two types of evidence that you may properly consider in finding the truth as to the facts in this case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of circumstances that indicates the existence or non-existence of certain other facts.

As a general rule, you should know that the law makes no distinction between direct or indirect -- that is, direct or circumstantial evidence -- but simply requires that you, the jury, find the facts based on the evidence as presented, both direct and circumstantial.

Now, the parties in this case may have stipulated or agreed to certain facts in the case, and when the lawyers for both sides stipulate as to the existence of a fact, you must, unless otherwise instructed, accept that stipulation as evidence and regard that fact as proven.

Certain testimony has been presented to you during this case through what are called depositions. A deposition is the sworn, recorded answers to questions asked to a witness in advance of the trial.

If a witness cannot be present to testify in person from open court, then the witness's testimony may be presented under oath in the form of a deposition.

08:35:55 As I told you earlier, before the trial begins,
08:36:02 attorneys representing both sides in this case questioned
08:36:04 these deposition witnesses under oath. At that time, a
08:36:07 court reporter was present and the witness was sworn and
08:36:10 placed under oath. Both sides had an opportunity to
08:36:14 contribute those portions of that testimony which were
08:36:18 ultimately played to you as a part of this trial in open
08:36:20 court.
08:36:20 Deposition testimony is entitled to be considered
08:36:25 by you as if it was just like the person had testified in
08:36:32 open court, and you must judge, as well as you can, the
08:36:36 credibility and believability of the witnesses presented by
08:36:41 deposition, as well as the witnesses who testified to you
08:36:44 live and in open court physically present.
08:36:47 Now, while you should consider only the evidence
08:36:51 in this case, ladies and gentlemen -- and this is
08:36:54 important -- you should understand that you are permitted
08:36:58 to draw such reasonable inferences from the testimony and
08:37:02 the exhibits that you feel are justified in the light of
08:37:06 common experience.
08:37:09 In other words, ladies and gentlemen, you may make
08:37:11 deductions and reach conclusions that reason and common
08:37:16 sense lead you to draw from the facts that have been
08:37:19 established by the testimony and the evidence in this case.
08:37:22 However, you should not base your decisions on any

08:37:27 evidence not presented by the parties in open court during
08:37:31 the course of the trial.
08:37:33 In deciding the facts in this case, you may have
08:37:37 to decide which testimony to believe and which testimony
08:37:41 not to believe. You alone, ladies and gentlemen, are to
08:37:46 determine all questions of credibility or truthfulness as
08:37:50 to the witnesses.
08:37:51 In weighing the testimony of the witnesses, you
08:37:53 may consider the witness's manner and demeanor on the
08:37:57 witness stand, any feelings or interests in the case, any
08:38:01 prejudice or bias about the case that he or she may have,
08:38:08 and the consistency or inconsistency of his or her
08:38:11 testimony considered in the light of the circumstances.
08:38:13 Has the witness been contradicted by other
08:38:16 credible evidence? Has he or she made statements at other
08:38:22 times and places contrary to the statements they made on
08:38:25 the witness stand?
08:38:25 You must give the testimony of each witness the
08:38:30 credibility that you think it deserves. But keep in mind,
08:38:34 ladies and gentlemen, a simple mistake does not mean that a
08:38:37 witness was not telling the truth. And you must consider
08:38:40 whether any misstatement made over the course of the trial
08:38:43 was an intentional falsehood or a simple lapse of memory,
08:38:48 and what significance should be attached to that testimony.
08:38:51 Now, unless I instruct you otherwise, you may

08:38:59 1 properly determine that the testimony of even a single
08:39:02 2 witness is sufficient to prove any fact, even if a greater
08:39:05 3 number of witnesses may have testified to the contrary, if
08:39:09 4 after considering all of the evidence you believe that
08:39:12 5 single witness.
08:39:15 6 Now, when knowledge of a technical subject may be
08:39:18 7 helpful to the jury, a person who has special training and
08:39:21 8 experience in that technical field, called an expert
08:39:25 9 witness, is permitted to state his or her opinions on those
08:39:31 10 technical matters to the jury.
08:39:33 11 However, ladies and gentlemen, you're not required
08:39:36 12 to accept those opinions. As with any other witness, it's
08:39:41 13 solely up to you to decide who to believe and who you don't
08:39:44 14 believe and whether or not you want to rely on their
08:39:46 15 testimony.
08:39:46 16 Now, over the course of the trial, certain
08:39:51 17 documents and exhibits have been shown to you that were
08:39:56 18 illustrations. We call these types of things demonstrative
08:39:59 19 exhibits. Sometimes we simply refer to them as
08:40:05 20 demonstratives.
08:40:06 21 Demonstrative exhibits are a party's description,
08:40:08 22 picture, model, or drawing to describe something involved
08:40:13 23 in the trial.
08:40:15 24 If your recollection of the evidence differs from
08:40:17 25 the demonstratives, you should rely on your recollection.

08:40:22 Demonstrative exhibits are sometimes called jury
08:40:25 aids. Remember, a demonstrative is not itself evidence,
08:40:30 but the witness's testimony which was given when a
08:40:34 demonstrative was used is evidence.
08:40:40 While demonstratives may be helpful to you in
08:40:42 determining the issues, the demonstrative exhibits from
08:40:45 both of the parties are not evidence, and they are not
08:40:47 proof of any facts. Accordingly, ladies and gentlemen,
08:40:51 demonstratives will not be available for you to consider
08:40:55 during your deliberations in the jury room.
08:40:57 Now, in any legal action, facts must be proven by
08:41:04 a required amount of evidence known as the burden of proof.
08:41:08 The burden in -- of proof in this case is on the Plaintiff
08:41:12 for some issues and is on the Defendant for other issues.
08:41:17 And there are two burdens of proof that you are to apply in
08:41:20 this case.
08:41:21 One is the preponderance of the evidence, and the
08:41:24 other is clear and convincing evidence.
08:41:28 The Plaintiff in this case, GREE, Inc., who you've
08:41:32 heard referred to throughout the trial simply as GREE, has
08:41:36 the burden of proving patent infringement by a
08:41:39 preponderance of the evidence.
08:41:41 GREE also has the burden of proving willful patent
08:41:44 infringement by a preponderance of the evidence. And GREE
08:41:48 has the burden of proof of proving damages for any patent

infringement by a preponderance of the evidence.

A preponderance of the evidence means evidence that persuades you that the claim is more probably true than not true. We sometimes talk about this as being the greater weight and degree of credible testimony.

The Defendant in this case, Supercell Oy, who you've heard referred to in -- throughout the trial simply as Supercell, has the burden of proving patent invalidity by clear and convincing evidence.

Clear and convincing evidence means evidence that produces in your mind an abiding conviction that the truth of the parties' factual contentions are highly probable.

Although proof to an absolute certainty is not required, the clear and convincing evidence standard requires a greater degree of persuasion than is necessary for the preponderance of the evidence standard.

Now, as I told you previously, neither of these burdens of proof should be con -- confused with the burden of proof of beyond a reasonable doubt, which is the burden of proof applied in a criminal case.

The burden of proof of beyond a reasonable doubt does not apply to this or any civil case. You should not confuse clear and convincing evidence with beyond a reasonable doubt.

Clear and convincing evidence is not as high a

burden of proof as beyond a reasonable doubt, but it is a higher burden of proof than the preponderance of the evidence.

Now, in determining whether any fact has been proven by a preponderance of the evidence or by clear and convincing evidence, you may, unless otherwise instructed, consider the stipulations of the parties, the testimony of all the witnesses, regardless of who called them, and all the exhibits which have been admitted into evidence by the Court throughout the trial, and regardless of who may have produced those exhibits.

Now, as I did at the beginning of the case, I'll give you a summary of each side's contentions, and then I'll provide you with detailed instructions about what each side must prove to win on each of its contentions.

As I've previously told you, this is an action for patent infringement. And this case concerns five separate United States patents. They are:

United States Patent No. 9,597,594, which you've heard referred to throughout the trial as the '594 patent.

United States Patent 9,604,137, which you've heard referred to throughout the trial as the '137 patent.

United States Patent 9,956,481, which you've heard referred to throughout the trial as the '481 patent.

United States Patent 9,774,655, which you've heard

08:44:55 1 referred to throughout the trial as the '655 patent.
08:44:59 2 And United States Patent 9,9 -- excuse me,
08:45:06 3 9,795,873, which you've heard referred to throughout the
08:45:10 4 trial as the '873 patent.
08:45:12 5 I'll refer to these patents in these instructions
08:45:16 6 as the patents-in-suit or as the asserted patents, and in
08:45:21 7 so doing, I'm referring to all five of them collectively.
08:45:24 8 Now, the Plaintiff, GREE, has alleged that certain
08:45:29 9 of Supercell's games directly infringe the asserted claims
08:45:34 10 of the patents-in-suit. Additionally, GREE seeks money
08:45:37 11 damages for infringement by Supercell involving three of
08:45:41 12 Supercell's games, which are Clash of Clans, Clash Royale,
08:45:47 13 and Brawl Stars, which GREE alleges use technology covered
08:45:51 14 by the claims of the asserted patents.
08:45:54 15 During these instructions you may hear these
08:46:02 16 products, these games referred to as the accused products,
08:46:08 17 and that's how I will try to refer to them throughout the
08:46:12 18 remainder of these instructions.
08:46:13 19 GREE contends that the accused products infringe
08:46:15 20 the following claims:
08:46:17 21 Claim 2 of the '594 patent.
08:46:20 22 Claim 1, 2, and 15 of the '137 patent.
08:46:24 23 Claim 4 and 5 of the '481 patent.
08:46:27 24 Claim 5 and 7 of the '655 patent.
08:46:30 25 And Claims 8 and 10 of the '873 patent.

These claims are sometimes called or referred to as the asserted claims.

GREE also alleges that Supercell's infringement is and has been willful. GREE seeks damages in the form of a reasonable royalty for Supercell's alleged infringement.

Now, Supercell, to be clear, denies that the accused products infringe any of the asserted claims of the five asserted patents. Supercell further denies that it willfully infringed any claim of the asserted patents.

Supercell also contends that the asserted claims of patent -- of the '137, the '481, the '655, and the '873 patents are invalid. Supercell denies that it owes GREE any damages in this case.

Remember, ladies and gentlemen, invalidity is a defense to infringement. Invalidity and infringement are separate and distinct issues. And your job is to decide whether any of the asserted claims has been infringed and when -- and whether any of the asserted claims of those four challenged patents are invalid.

It's your job as members of the jury to decide whether GREE has proven that Supercell has infringed any of the asserted claims of the asserted patents and whether that infringement was willful.

You must also decide whether Supercell has proven that any of the asserted claims of the '137, the '481, the

'655, and the '873 patents are invalid.

If you decide that any of the asserted claims have been infringed and are not invalid, then you'll have to decide what amount of money damages, if any, are to be awarded to GREE to compensate it for that infringement.

Now, before you can decide many of the issues in this case, you'll need to understand the role of the patent claims.

The claims of the patent are the numbered sentences at the end of the patent. The claims define the patent owner's rights under the law. The claims are important because it's the words of the claims themselves that define what the patent covers.

The figures and the text in the rest of the patent are intended to provide a description or examples of the invention, and they provide a context for the claims. But it is the claims, ladies and gentlemen, that define the breadth of the patent's coverage.

Each claim is effectively treated as if it were its own separate patent, and each claim may cover more or may cover less than any other claim. Accordingly, what a patent covers collectively or as a whole depends on what each of its claims cover.

You'll first need to understand what each claim covers in order to decide whether or not there is

infringement of that claim and to decide whether or not the claim is invalid.

The first step is to understand the meaning of the words used in the patent claim.

Now, the law says that it's my role as the Judge to define the terms of the claims, but it's your role as the jury to apply my definitions to the issues that you've been asked to decide in this case.

Accordingly, and as I explained at the beginning of the case, I have determined the meaning of certain claim language, and I've provided those definitions to you of those claim terms in your juror notebooks.

You must accept my definitions and constructions of these words in the claims as being correct. And it's your job to take these definitions that I've supplied and apply them to the issues that you are asked to decide, including the issues of infringement and invalidity.

My interpretation of the claim terms should not be taken by you as an indication that I have a view regarding the issues of infringement and invalidity. The decisions regarding infringement and invalid -- and invalidity, ladies and gentlemen, are yours alone to make.

Now, for claim limitations where I have not construed -- that is, defined or interpreted -- any particular term or language of the claims, you're to apply

the plain and ordinary meaning of the term as understood by a person of ordinary skill in the art, which is to say in the field of the technology of the patent at the time of the alleged invention.

The meaning of the words of the patent claims must be the same when deciding the issues of infringement and when deciding the issues of invalidity.

I'll now explain what a claim covers -- excuse me, I'll now explain how a claim covers -- I'll now explain how a claim defines what it covers. I got it right.

A claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. If a device satisfies each of these requirements in the sentence, then it is covered by and infringes the claim.

There can be several claims in a patent. A claim may be narrower or broader than any other claim by setting forth more or fewer requirements. The coverage of a patent is assessed on a claim-by-claim basis.

In patent law, the requirement -- the requirements of a claim are often referred to as the claim elements or the claim limitations. Those mean the same thing.

When a patent meets all the requirements or limitations of a claim -- that is, it meets all of the elements or all of the limitations of that claim -- it is

said to cover that product, and that product is said to fall within the scope of that claim.

In other words, a claim covers a product where each of the claim elements or limitations is present in that product.

If a product is missing even one limitation or element of a claim, the product is not covered by that claim.

If a product is not covered by that claim, the product does not infringe that claim.

Now, this case involves two types of patent claims, independent claims and dependent claims.

An independent claim does not refer to any other claim in the patent. An independent claim sets forth all the requirements that must be met in order to be covered by the claim. And it's not necessary to look to any other claim to determine what an independent claim covers.

By contrast, a dependent claim does not by itself recite all the requirements of the claim but refers to another claim or claims for some of its requirements. In this way, the dependent claim depends on another claim.

The law considers a dependent claim to incorporate all the requirements of the claim or claims to which it refers or depends, as well as the additional claims set forth in the dependent claim itself.

08:54:16 So to determine what a dependent claim covers,
08:54:19 it's necessary to look at both the dependent claim and any
08:54:24 other claim to which it refers, or as we sometimes say,
08:54:27 from which it depends.
08:54:28 A product that meets all the requirements of both
08:54:31 the dependent claim and the claim or claims to which it
08:54:35 refers or depends is covered by that dependent claim.
08:54:38 Now, certain claims of the asserted patents use
08:54:42 the word "comprising." Comprising means including or
08:54:46 containing. When the word "comprising" is used, a product
08:54:51 that includes all the limitations or elements of the claim,
08:54:55 as well as additional elements, is covered by the claim.
08:55:00 For example, if you take a claim that covers the
08:55:02 invention of a table, if the claim recites a table
08:55:06 comprising a tabletop, four legs, and nails to hold the
08:55:11 legs to the tabletop, the claim will cover any table
08:55:16 that -- that contains these specific structures, even if
08:55:20 the table also contains other structures, such as leaves to
08:55:25 go in the tabletop or wheels to go on the ends of the legs.
08:55:28 And that's a simple example using the word
08:55:31 "comprising" and what it means. In other words, ladies and
08:55:34 gentlemen, it can have other features in addition to those
08:55:38 that are covered by the patent.
08:55:40 But if a product is missing even one element or
08:55:44 limitation of a claim, it does not meet all the

requirements of the claim and is not covered by the claim. And if a product is not covered by the claim, it does not infringe that claim.

I'll now instruct you on infringement in more detail.

If a person makes, uses, sells, or offers for sale within the United States or imports into the United States what is covered by a patent claim without the patent owner's permission, that person is said to infringe the patent.

To determine whether there is infringement, you must compare the asserted claims, as I've defined them for you, to the accused products. You should not compare the accused products with any specific example set out or described in the patent or within the prior art in reaching your decision on infringement.

As I've reminded you, the only correct comparison is between the accused products and the language of the asserted claims themselves.

You must reach your decision as to each assertion of infringement based on my instructions about the meanings and scope of the claims, the -- the legal requirements for infringement and the evidence presented to you by both of the parties in this case.

I'll now instruct you on the specific rules that

you must follow to determine whether GREE has proven that Supercell has infringed one or more of the patent claims involved in this case.

In order to prove infringement of a patent claim, GREE must show by a preponderance of the evidence that the accused product includes each requirement or limitation of the claim.

The issue of infringement is assessed on a claim-by-claim basis within each patent. Therefore, there may be infringement as to a particular -- of a particular patent as to one claim even if there is no infringement as to other claims within that patent.

In this case, GREE contends that Supercell both directly infringes and indirectly infringes the asserted claims.

In order to directly infringe a patent claim, the accused product must include or perform each and every element of the claim. Thus, in determining whether Supercell infringes GREE's asserted claims, you must determine if the accused products contain or perform each and every element recited in a claim of the asserted patent.

If a particular sequence is required by the claims, the accused products must follow that sequence.

In the case of the asserted claims of the '137 and

'481 patents, selection must precede subtraction, and subtraction must precede addition.

As to Claims 2 and 15 of the '137 patent and the asserted claims of the '481 patent, selection must precede game content removal, and game content removal must precede game content update.

A claim element is literally present if it exists in or is performed by the accused product as it is described in the claim language either as I've explained it to you, or if I did not, according to the plain and ordinary meaning as understood by one of ordinary skill in the art.

Now, a party can directly infringe a patent without knowing of the patent or without knowing that what a party is doing is patent infringement, and whether the patent practices the patent -- excuse me, whether the Plaintiff practices the patent is irrelevant to whether there is infringement by the Defendant.

You must determine, ladies and gentlemen, separately for each asserted claim, whether or not there is infringement, because in order for a claim to be infringed, each and every requirement of the claim must be present or performed. Even if a single requirement of the claim is missing from the accused product, the claim is not infringed.

09:00:10 For dependent claims, if you find that an
09:00:14 independent claim from which that dependent claim refers or
09:00:17 depends is not infringed, there cannot be infringement of
09:00:21 that dependent claim.
09:00:23 On the other hand, if you find that an independent
09:00:26 claim has been infringed, you must still decide separately
09:00:30 whether the product or process meets the additional
09:00:33 requirements set forth in a dependent claim to determine
09:00:38 whether that dependent claim has been infringed.
09:00:40 In this case, Claim 2 of the '594 patent,
09:00:47 Claims 14 and 15 of the '137 patent, and Claim 7 of the
09:00:55 '655 patent, and Claim 10 of the '873 patent recite method
09:01:00 claims.
09:01:00 Direct infringement of a method claim occurs where
09:01:04 all the steps of the claimed method are performed by or
09:01:11 attributable to a single party.
09:01:13 Direct infringement of a method claim can occur
09:01:16 where the Defendant performs certain steps of the method
09:01:18 and others are performed by equipment that the Defendant
09:01:21 controls but that it is in the hands of third parties.
09:01:25 Claims 1 and 2 of the '137 patent, Claims 4 and 5
09:01:32 of the '481 patent, and Claim 5 of the '655 patent, as well
09:01:37 as Claim 8 of the '7 -- excuse me, the '873 patent all
09:01:42 recite device or system claims.
09:01:45 To use a system for purposes of infringement,

09:01:49 Supercell must put the invention into service, that is,
09:01:53 control the system as a whole and obtain the benefit from
09:01:57 it.
09:01:58 GREE, the Plaintiff, also alleges that the def --
09:02:04 that the Defendant, Supercell, is liable for indirect
09:02:06 infringement by actively inducing its users to -- to
09:02:11 directly infringe the asserted claims.
09:02:15 As with direct infringement, you must determine
09:02:17 whether there has been induced infringement on a
09:02:20 claim-by-claim basis.
09:02:22 Supercell is liable for infringed -- excuse me,
09:02:28 induced infringement of a claim only if GREE proves by a
09:02:32 preponderance of the evidence that:
09:02:35 (1) the acts have been carried out by Supercell's
09:02:38 users and directly infringe that claim;
09:02:41 (2) Supercell has taken action intending to cause
09:02:45 the infringing acts by its users;
09:02:49 And (3) Supercell has been aware of the accused
09:02:58 patents and has known that the acts of its users constitute
09:03:03 infringement of the asserted patents or was willfully blind
09:03:05 to that infringement.
09:03:06 To establish induced infringement, it's not
09:03:10 sufficient that someone else directly infringes a claim,
09:03:12 nor is it sufficient that the company accused of inducing
09:03:16 another's direct infringement merely had knowledge or

notice of an asserted patent or had been aware of the acts of another that allegedly constitute direct infringement.

And the mere fact that the company accused of inducing another's direct infringement had known or should have known that there was a substantial risk that someone else's acts would infringe is not sufficient.

Rather, in order to find inducement, you must find that Supercell specifically intended or was willfully blind to that infringement.

GREE also alleges that Supercell is liable for contributory infringement by contributing to the direct infringement of the asserted claims by the players of the accused products. As with direct infringement, you must determine contributory infringement on a claim-by-claim basis.

Supercell is liable for contributory infringement of a claim if GREE proves by a preponderance of the evidence:

(1) Supercell offers to sell or imports into the United States a component of a product or apparatus for use in a process during the time the asserted patents were in force;

(2) the component or apparatus has no substantial non-infringing use;

(3) the component or apparatus constitutes a

material part of the invention;

(4) Supercell was aware of the asserted patents and knew that the component or apparatus is especially made or adapted for use in -- in -- adapted for use as an infringement of the claim;

And (5) the players of the accused products used the component or apparatus to directly infringe the claim.

In this case, GREE also contends that Supercell willfully infringed its patents. If you have decided that Supercell has infringed, you must go on and separately address the additional issue of whether or not Supercell's infringement was willful.

GREE must prove willfulness by a preponderance of the evidence. In other words, you must determine whether it is more likely than not that Supercell willfully infringed.

You may not determine that the infringement was willful just because Supercell knew of the asserted patents and infringed them. However, you may find that Supercell willfully infringed if you find that it acted egregiously, willfully, or wantonly. You may find Supercell's actions were egregious, willful or wanton if it acted in reckless or callous disregard of or with indifference to the rights of GREE.

A Defendant is indifferent to the rights of

another when it proceeds in disregard of a high or excessive danger of infringement that was known to it or was apparent to a reasonable person in its position.

Your determine -- your determination of willfulness should incorporate the totality of the circumstances based on all of the evidence presented during the course of the trial.

Willfulness can be established by circumstantial evidence. If you decide that there was willful infringement, that decision should not affect any damage award that you might render in this case.

I'll now instruct you on the rules that you must follow in deciding whether or not Supercell has proven by clear and convincing evidence that the asserted claims of the asserted patents are invalid.

An issued United States patent is accorded a presumption of validity based on the presumption that the U.S. Patent and Trademark Office, which you've heard referred to throughout this trial as the PTO or as the Patent Office, acted correctly in issuing the patent.

This presumption of validity extends to all issued United States patents. In order to overcome this presumption, Supercell must establish by clear and convincing evidence that the pat -- that the Plaintiff's patent or any claim in the patent is not valid.

09:07:58 Even though the Patent and Trademark Office's
09:08:01 examiner has allowed the claims of a patent, you have the
09:08:04 ultimate responsibility, ladies and gentlemen, for deciding
09:08:08 whether the claims of the patent are valid.
09:08:09 Like infringement, invalidity is determined on a
09:08:14 claim-by-claim basis. Claims are construed in the same way
09:08:18 for determining infringement as for determining invalidity.
09:08:23 You must apply the claim language consistently and
09:08:26 in the same manner for both the issues of infringement and
09:08:26 for the issues of invalidity. You must determine
09:08:30 separately for each claim whether the claim is invalid.
09:08:36 If one asserted claim is invalid, this does not
09:08:39 mean that any other asserted claim is necessarily invalid.
09:08:44 However, if a dependent claim is invalid, then the
09:08:48 independent claim from which it depends is also invalid.
09:08:52 As I previously explained, to obtain a patent, one
09:08:58 must first file an application with the U.S. Patent and
09:09:02 Trademark Office, the PTO. The process of obtaining a
09:09:05 patent is called patent prosecution.
09:09:08 The application submitted to the PTO includes
09:09:12 within it what's called a specification. The specification
09:09:17 is required to contain a written description of the claimed
09:09:20 invention telling what the invention is, how it works, how
09:09:25 to make it, and how to use it.
09:09:27 The patent law contains certain requirements for

09:09:31 the part of the patent called the specification. The
09:09:34 written description requirement is designed to ensure that
09:09:39 the inventor was in possession of the full scope of the
09:09:42 claimed invention as of the patent's effective filing date.
09:09:46 Supercell contends in this case that the asserted
09:09:51 claims of GREE's '873 patent are invalid because the
09:09:55 specification of the '873 patent does not contain an
09:10:00 adequate written description of the invention.
09:10:03 To succeed on this, Super -- Supercell must show
09:10:08 by clear and convincing evidence that a person having
09:10:10 ordinary skill in the field reading the patent
09:10:14 specification as of the effective date of February the
09:10:19 26th, 2013, would not have recognized that it describes the
09:10:24 full scope of the invention as it is claimed in the claims
09:10:27 of the '873 patent. If a patent claim lacks adequate
09:10:35 description, it is invalid.
09:10:37 In deciding whether a patent satisfies this
09:10:42 written description requirement, you must consider the
09:10:45 description from the viewpoint of a person having ordinary
09:10:48 skill in the field of the technology of the patent as of
09:10:52 the effective filing date.
09:10:55 The specification must describe the full scope of
09:10:58 the claimed invention, including each element thereof,
09:11:01 either expressly or inherently.
09:11:05 A claimed element is disclosed inherently if a

person having ordinary skill in the field of the patent as of the effective date, would have understood that the element is necessarily present in what the specification discloses. It's not sufficient that the specification discloses only enough to make the claimed invention obvious to the person having ordinary skill.

The written description does not have to be in the exact words of the claim. The requirement may be satisfied by any combination of words, structures, figures, diagrams, formulas, et cetera, contained in the patent specification.

Adequate written description does not require either examples or an actual reduction to practice of the claimed invention.

However, a mere wish or plan for obtaining a claimed invention is not an adequate written description. Rather, the level of disclosure required depends on a variety of factors, such as the existing knowledge in the particular field, the extent and content of the prior art, the maturity of the science or technology, and other considerations appropriate to the subject matter.

Now, at times, you'll hear me make references to prior art. In patent law, a previous device, system, method, publication, or patent that predates the claimed invention is generally called prior art. It's sometimes called a prior art reference. Prior art may include any of

the following items:

(1) Any products or system that was known or used by others in the United States before the patented inventions were made;

(2) any patent that issued or any printed publication that published or -- that was published or any patent that was issued anywhere in the world before the patented inventions were made;

(3) any product or system that was in public use or on sale in the United States more than one year before the applications for the asserted patents were filed;

(4) any patents that issued or any pub -- any printed publications that were published anywhere in the world more than one year before the application for the asserted patents were filed;

(5) any patent application that was filed in the United States by someone other than the inventors of the asserted patents before the invention was made.

Now, the earliest possible priority dates of the asserted patents in this case are as follows:

March 4, 2013, for the '481 patent.

March 4, 2013, for the '137 patent.

September 20, 2012, for the '655 patent.

February 26, 2013, for the '873 patent.

In order for someone to be entitled to a patent,

09:14:20 the invention must actually be new and not obvious over
09:14:25 what came before, which is referred to as the prior art.
09:14:30 Prior art is considered in determining whether the
09:14:32 asserted claims of the asserted patents are -- are -- are
09:14:37 anticipated or are obvious.
09:14:38 Now, you have heard evidence of prior art that the
09:14:44 Patent Office may or may not have evaluated. The fact that
09:14:50 any particular reference was or was not considered by the
09:14:54 Patent Office does not change Supercell's burden of proof.
09:14:58 However, in making your decision as to whether
09:15:00 Supercell has met its burden of proof by clear and
09:15:04 convincing evidence as to a particular patent claim, you
09:15:08 may take into account the fact that the prior art was not
09:15:12 considered by the Patent Office.
09:15:14 Prior art differing from the prior art considered
09:15:17 by the Patent Office may, but does not always, carry more
09:15:22 weight than the prior art that was considered by the Patent
09:15:24 Office.
09:15:28 Again, ladies and gentlemen, the ultimate
09:15:29 responsibility for deciding whether the claims of the
09:15:32 patent are valid is up to you, the members of this jury.
09:15:36 Keep in mind that everyone has the right to use
09:15:42 existing knowledge and principles. A patent cannot remove
09:15:45 from the public the availability to use what was known or
09:15:47 obvious before the invention was made or patent protection

was sought.

Infringement, like -- excuse me.

Like infringement, invalidity is determined on a claim-by-claim basis. In making your determination as to invalidity, you should consider each claim separately.

If one claim of a patent is invalid, that does not mean that any other claim is necessarily invalid. Claims are construed the same way for determining infringement as for determining invalidity.

Supercell, the Defendant, contends that the '137, the '481, the '655, and the '837 [sic] patents are invalid as being either anticipated or as being obvious.

Anticipation must be determined on a claim-by-claim basis. Supercell must prove by clear and convincing evidence that all of the requirements of a claim are present in a single piece of prior art.

To anticipate the invention, the prior art does not have to use the same words as in the claim, but all the requirements of the claim must have been disclosed and arranged as in the claim.

The claim requirements may either be disclosed expressly or inherently, that is, necessarily implied, such that a person having ordinary skill in the art in the technology of the invention looking at that one single reference could make and use the claimed invention.

09:17:28 Where Supercell is relying on prior art that was
09:17:32 not considered by the Patent Office during the examination,
09:17:38 you may consider whether that prior art is significantly
09:17:41 different and more relevant than the prior art that the
09:17:45 PTO, the Patent Office, did consider.
09:17:48 If you decide it is different and more relevant,
09:17:51 you may weigh that prior art more heavily when considering
09:17:58 whether the challenger has carried its clear and convincing
09:18:04 burden of proof as to invalidity.
09:18:05 If a dependent claim is anticipated by the prior
09:18:07 art, then the claims from which it depends are necessarily
09:18:13 anticipated, as well.
09:18:16 Additionally, even though an invention may not
09:18:20 have been identically disclosed or described before it was
09:18:23 made by an inventor in order to be patentable, the
09:18:28 invention also must not have been obvious to a person of
09:18:32 ordinary skill in the field of technology of the patent at
09:18:35 the time the invention was made or before the filing date
09:18:40 of the patent.
09:18:43 Supercell is required to establish that a patent
09:18:46 claim is invalid by showing by clear and convincing
09:18:48 evidence that the claimed invention would have been obvious
09:18:57 to persons having ordinary skill in the art at the time the
09:19:00 invention was made or patent was filed in the field of the
09:19:03 invention.

09:19:04 In determining whether a claimed invention is
09:19:07 obvious, ladies and gentlemen, you must consider the level
09:19:09 of ordinary skill in the field of the invention that
09:19:12 someone would have had at the time the invention was made
09:19:16 or the patent was filed, the scope and content of the prior
09:19:21 art, and any differences between the prior art and the
09:19:23 claimed invention.
09:19:24 Keep in mind that the existence of each and every
09:19:32 element of the claimed invention in the prior art does not
09:19:36 necessarily prove obviousness. Most, if not all,
09:19:39 inventions rely on the building blocks of prior art.
09:19:43 In considering whether a claimed invention is
09:19:45 obvious, you may, but you are not required, to find
09:19:49 obviousness if you find that at the time of the claimed
09:19:52 invention or the patent's filing date there was a reason
09:19:56 that would have prompted a person having ordinary skill in
09:19:59 the field of the invention to combine the known elements in
09:20:07 the way the claimed invention does, taking into account
09:20:10 such factors as:
09:20:11 (1) Whether the claimed invention was merely the
09:20:14 predictable result of using prior art elements according to
09:20:17 their known function;
09:20:18 (2) whether the claimed invention provides an
09:20:21 obvious solution to the known problem in the relevant
09:20:26 field;

(3) whether the prior art teaches or suggests the desirability of combining elements in the claimed invention, such as where there is a motivation to combine;

(4) whether the prior art teaches away from combining elements in the claimed invention;

And (5) whether it would have been obvious to try the combinations in the claimed invention, such as where there is a design incentive or market pressure to solve a problem and there are a finite number of identified, predictable solutions, although obvious to try is not sufficient in unpredictable technologies.

To -- to find that it renders the invention obvious, you must find that the prior art provided a reasonable expectation of success.

In determining whether the claimed invention was obvious, consider each claim separately. Do not use hindsight. In other words, ladies and gentlemen, you should not consider what a person of ordinary skill in the art would know now or what has been learned from the teaching of the asserted patents.

In making these assessments, you should take into account any objective evidence, sometimes called secondary considerations, that may shed light on the obviousness or not of the claimed invention, such as:

(1) Whether the invention was commercially

successful;

(2) whether the invention satisfied a long-felt need in the art;

(3) whether others had tried and failed to make the claimed invention;

(4) whether others invented the claimed invention at roughly the same time;

(5) whether there were changes or related technologies or market needs contemporaneous with the claimed invention;

(6) whether others in the field praised the claimed invention;

And (7), whether others sought or obtained rights to the patent from the patentholder.

No factor alone is dispositive, and you must consider the obviousness or non-obviousness of the inventions as a whole. These factors are relevant only if there is a connection or a nexus between the factor and the asserted claims of the asserted patents.

Even if you conclude that some of the above indicators have been established, those factors should be considered along with all the other evidence in the case in determining whether Supercell has proved that the claimed invention would have been obvious.

In determining whether the claimed invention was

obvious, consider each claim separately, but understand that if a dependent claim is obvious, then the claims from which it depends are necessarily obvious, as well.

Now, several times in these instructions I referred to a person of ordinary skill in the field of the invention. It's up to you to decide, ladies and gentlemen, the level of ordinary skill in the field of the invention.

In deciding the level of ordinary skill -- in deciding what it is, you should consider all the evidence introduced during the course of the trial including:

(1) The levels of education and experience of the inventors and other persons working in the field;

(2) the types of problems encountered in the field;

(3) prior art solutions to those problems;

(5) [sic] rapidity with which inventions are made;

And (5) the sophistication of the technology.

A person of ordinary skill in the art is a hypothetical person who is presumed to be aware of all the relevant prior art at the time of the claimed invention.

If you find that GREE has proven that Supercell has infringed any of the asserted claims and that Supercell has failed to show that the asserted claims are invalid, you must then consider the proper amount of damages, if any, to award to GREE.

I'll now instruct you about the measure of damages. However, by instructing you on damages, ladies and gentlemen, I am not suggesting which party should win this case on any issue.

If you find that Supercell has not infringed any of the asserted claims or that all of the infringed claims are invalid, then GREE is not entitled to any damages.

If you award damages, they must be adequate to compensate GREE for any infringement of the asserted claims you may find. You may not award and you must not award GREE more damages than are adequate to compensate it for the infringement, nor should you include any additional amount for the purpose of punishing Supercell.

The patent law specifically provides that damages for infringement may not be less than a reasonable royalty.

GREE has the burden to establish the amount of its damages by a preponderance of the evidence. In other words, you should award only those damages that GREE establishes that it, more likely than not, suffered as a result of Supercell's infringement of the asserted claims.

While GREE is not required to prove the amount of its damages with mathematical precision, it must prove them with reasonable certainty. GREE is not entitled to damages that are remote or are speculative.

There are different types of damages that GREE may

be entitled to recover.

In this case, GREE seeks damages in the form of a reasonable royalty.

A reasonable royalty is the amount of royalty payment that a patentholder and the alleged infringer would have agreed to in a hypothetical negotiation taking place at a time immediately prior to when the infringement first began.

You've heard references throughout this trial to whether GREE should be entitled to a running royalty or a lump sum royalty. If you -- if you find that GREE is entitled to damages, you must decide whether the parties would have agreed to a running royalty or a fully paid-up lump sum royalty at the time of the hypothetical negotiation.

A running royalty is a fee paid for the right to use the patent that is paid for each unit of the infringing products that have been sold. A running royalty can be based on the revenue from or the volume of sales of licensed products.

If there are additional units sold in the future, any damages for these sales will not be addressed by you. If you decide that a running royalty is appropriate, then you must -- then the damages you award, if any, should reflect the total amount necessary to compensate GREE for

Supercell's past infringement.

However, a lump sum royalty is when the infringer pays a single price for a license covering both past and future infringing sales. If you decide that a lump sum royalty is appropriate, then the damages you award, if any, should reflect the total amount necessary to compensate GREE for Supercell's past and future infringement.

In determining the reasonable royalty, you should consider all the facts known -- known and available to the parties at the time the infringement began. Some kinds of the factors that you may consider in making your determination are:

(1) the value of the claim -- the value that the claimed invention contributes to the accused product;

(2) the value that factors other than the claimed invention contribute to the accused product;

(3) comparable license agreements or other transactions, such as those covering the use of the claimed invention or similar technology;

(4) the utility and advantages of patented property over the old modes or devices, if any, that had been used for working out similar results;

(5) the nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor, and the benefits to those who

have used the invention;

(6) the extent to which the infringer has made use of the invention and any evidence probative of the value of that use;

(7) the portion of the realizable profits that should be credited to the invention as distinguished from the non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer;

And (8) the amount that a licensor, such as the patentee, and a licensee, such as the infringer, would have agreed upon at the time the infringement began if both had been reasonably and voluntarily trying to reach an agreement, that is, the amount which a prudent licensee who desired as a business proposition to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable to a prudent patentee who was willing to grant a license.

Now, no one of these factors is dispositive, ladies and gentlemen, and you can and should consider all the evidence that's presented to -- been presented to you in this case on each of these factors.

You may also consider any other factors which in

your mind would have increased or decreased the royalty the alleged infringer would have been willing to pay and the patent owner would have been willing to accept, acting as normally prudent business people.

You've heard throughout the trial references to whether the reasonable royalty should be a running royalty or lump sum.

If you find that GREE is entitled to damages, you must decide whether the parties would have agreed to a running royalty or a fully paid-up lump sum royalty at the time of the hypothetical negotiation.

GREE is entitled to damages for at least as early as the date of first infringement after the issuance of the asserted patents.

In addition to seeking damages for alleged infringement after the asserted patents issued, GREE also contends that it should be awarded damages for the '137 and the '655 patents before those two patents issued.

To be entitled to damages before the issuance of a patent, GREE must prove that:

(1) Supercell had actual notice of a published patent application for that patent;

And (2) the asserted claims of the issued patent are substantially identical to the claims of the published application.

09:32:04 Actual notice does not require any affirmative act
09:32:09 by GREE notifying Supercell of the published patent
09:32:13 application and may be proven by circumstantial evidence.
09:32:19 The dates on which these damages begin are:
09:32:23 For the -- for the '594 patent, June the 11th,
09:32:28 2018.
09:32:28 For the '137 and '481 patents, September the 12th,
09:32:33 2016, or at the latest, March the 28th, 2017.
09:32:37 For the '655 patent, September the 12th, 2016, or
09:32:43 at the latest, September the 26th, 2017.
09:32:47 And for the '873 patent, December the 12th, 2018.
09:32:51 Now, in considering this hypothetical negotiation,
09:32:55 you should focus on what the expectations of the
09:32:57 patentholder and the alleged infringer would have been had
09:33:02 they entered into an agreement at that time and had they
09:33:05 acted reasonably in their negotiations.
09:33:07 In determining this, you must assume that both
09:33:12 believe the asserted claims were valid and infringed, and
09:33:16 both parties were willing to enter into an agreement.
09:33:20 The reasonable royalty that you determine must be
09:33:23 a royalty that would have resulted from the hypothetical
09:33:27 negotiation and not simply a royalty that either party
09:33:29 would have preferred.
09:33:32 The law requires that any damages awarded to GREE
09:33:36 correspond to the value of the alleged inventions within

09:33:39 the accused products as distinct from other unpatented
09:33:43 features of the accused products or other features, such as
09:33:47 marketing or advertising or Supercell's size or market
09:33:51 position.
09:33:52 This is particularly true where the accused
09:33:55 products have multiple features and multiple components not
09:33:59 covered by the patent or where the accused products work in
09:34:03 conjunction with other non-patented items. Therefore, the
09:34:09 amount you find as damages must be on the value
09:34:15 attributable to the patented technology alone.
09:34:18 Now, ladies and gentlemen, having given you these
09:34:21 instructions, we will proceed to hear closing arguments
09:34:23 from the parties.
09:34:24 Plaintiff, you may now present your first closing
09:34:27 argument to the jury.
09:34:28 MR. MOORE: Thank you, Your Honor.
09:34:28 THE COURT: Would you like a warning on your time,
09:34:30 Mr. Moore?
09:34:31 MR. MOORE: Yes, Your Honor, three minutes -- with
09:34:34 three minutes remaining, please.
09:34:36 THE COURT: Three minutes remaining out of your
09:34:37 total?
09:34:38 MR. MOORE: Out of 20, please --
09:34:39 THE COURT: Three out of -- so when 17 minutes
09:34:41 have been used?

09:34:42 MR. MOORE: Yes, sir. Thank you.
09:34:43 THE COURT: Okay. Please proceed.
09:34:44 MR. MOORE: Thank you.
09:35:10 THE COURT: You may proceed when you're ready, counsel.
09:35:13 MR. MOORE: Thank you, Your Honor.
09:35:13 Good morning, ladies and gentlemen.
09:35:17 Thank you very much for your service throughout this trial this past week.
09:35:23 On behalf of my client, Mr. Eiji Araki and GREE, and my co-counsel, Ms. Smith, and my law partner, Ms. Ludlam, we thank you very much, and it's been our privilege and honor to present this important case to you.
09:35:43 You've all been very attentive, and you've all been very patient with us as we've worked through this trial. And we cannot thank you enough for the civic service that you are rendering in our system of justice, because this is an important case on an important issue in our country's system of justice.
09:36:02 Patents are in the U.S. Constitution, as I mentioned in the opening statement, and they're there to protect new ideas.
09:36:09 And GREE has had new ideas, new ideas for mobile social games throughout its history and how to make those games more engaging for users that play them. We are here

because of five U.S. patents that GREE received on those ideas.

And we presented to you GREE's story, how it was founded, what its businesses are.

You heard from Mr. Araki, GREE's senior vice president and a member of its board of directors, who has been here at trial the entire time. And you heard him on the witness stand last Friday explain to you all about GREE and what it's about and why innovation is so important to GREE and why GREE files for united -- for patents both in the United States and around the world, to protect its inventions, its innovations, and protect them from competition in the industry.

And we've also seen and heard that four of these five patents, they went through an extensive examination process in the United States Patent Office. In fact, four different patent examiners looked at the applications that GREE filed for these patents, and that was after it went through five levels of internal approval in the first place.

These expert examiners at the Patent Office searched for the prior art and made sure that the patents deserved to be protected. And at the end of that process, each of those four examiners concluded that GREE's inventions were new and worthy of protection under United

States law.

And you've heard a lot about these five patents throughout this case. You've heard all about what they relate to, what their claims are, and how they're involved in the gaming industry, such as the '594 template patent, which allows players of certain types of games, these city building games, to save a lot of time by copying and saving different types of layouts, including from other players, rather than spending the time, upwards of 20, 30 minutes to do it themselves.

It helps them -- keep them engaged in the game, helps the use more -- users more interested. It also helps the game maker retain more users, which as you've heard is a benefit to the game makers, as well, by having more users play their games and some portion of them decide they want to pay to play the games more.

The '137 and '481 battle patents, you've heard how these make these card battle games more interesting and engaging, and they do that through a fairly complex series of mechanics for how the points are handled, how resources are allocated in the game, how cards are played and updated, and how the battle takes place.

You've heard about the '655 donation patent, which increases social engagement in games. You've heard a lot of testimony about keeping players engaged and keeping them

09:39:13 social, making them make friends, making them interact in
09:39:17 groups or clans; really helps the engagement of the
09:39:22 players, makes them enjoy the game. And, again, it also
09:39:24 helps the makers of the game add more users in the game.
09:39:26 And the donation patent has systems and methods
09:39:29 that do that by encouraging gifting among users,
09:39:34 encouraging one user to give to another, and then giving
09:39:37 the recipient an incentive to perhaps encourage the
09:39:40 receiver of the gift to do the same thing in return.
09:39:43 And, lastly, you heard about the '873 patent and
09:39:46 how it increases the user playability and engagement of
09:39:52 shooting games on a small touchscreen, how it helps the
09:39:55 controls work so that these games actually work on your
09:39:58 phone, and how that helps players be more engaged and more
09:40:02 interested and also helps the makers of the games, as well.
09:40:05 Now, GREE played by the rules. When it came up
09:40:10 with new ideas, it sought patents, and it got those
09:40:13 patents.
09:40:13 Supercell did not play by the rules, and that's
09:40:16 what this case is about. We're ask -- we're going to ask
09:40:19 you to hold Supercell responsible for that decision.
09:40:22 Now, the trial started off last week after you
09:40:27 were selected and sworn in and we presented our opening
09:40:32 statements, the trial started off with us addressing why we
09:40:34 are all here. As His Honor told you the very first day

09:40:40 when all of you, along with many others, were gathered out
09:40:46 there in the audience, this is a patent infringement case.
09:40:48 So what did we do? Our very first witness came up
09:40:51 on the stand to talk about patent infringement, Dr. Robert
09:40:54 Akl. And he testified, I think, for over five hours last
09:40:58 Thursday afternoon, Friday morning, into Friday afternoon.
09:41:01 It was a long time on the stand. I was tired, I'm sure he
09:41:06 was tired, no doubt many of you may have been tired, as
09:41:08 well.
09:41:09 But why did we do that? We did that because we
09:41:12 wanted to show you beyond any doubt that Supercell
09:41:15 infringes each of GREE's five patents.
09:41:18 And we took the time to do that. We took the time
09:41:21 in our case, nearly half of the time that we spent in our
09:41:25 case under the time we were allotted was spent on this
09:41:28 question of infringement, and we showed you exhaustive
09:41:32 evidence of that.
09:41:33 We showed you the games. We showed you many
09:41:35 videos. We -- we paused them. We played them over again.
09:41:39 We wanted you to understand how these games work and why
09:41:42 they infringe. And we showed you each and every word of
09:41:44 the 10 patent claims in the five patents that we are here
09:41:47 to prove that Supercell infringes.
09:41:49 We also showed you their source code. And as you
09:41:55 saw, that was -- involved a little bit more than showing

the videos. We had to seal the courtroom. We had to get out paper, present it on the ELMO, I had to move it around. And Dr. Akl walked through the source code for each of the -- that was relevant to each of the three games that infringe GREE's five patents. And he showed you where in the code Supercell has GREE's patented technology. He showed you that in detail.

And you heard a lot about source code in this trial and why it is important.

This is testimony from Supercell's own expert, Dr. Mark Claypool, who was one of the witnesses who testified by video.

And Dr. Claypool I thought perhaps said it best: To know what the game is really doing, you look at the code.

And that's what we did, and we showed you that, and we showed you that infringement that Supercell has by having GREE's inventions in its code.

Now, what did Supercell bring? It had four Supercell witnesses testify at this trial, one live, and three by video.

Mr. Harper, who came in for a brief time last Monday and took the stand and is on the board, doesn't know anything about source code.

Mr. Joas, who is the game lead for Clash of Clans,

admitted he doesn't know anything about source code.

Mr. Ahlgren, the game lead for Clash Royale, also admitted doesn't know anything about source code.

These are the people who lead the teams, who write the code and program the games, the most important evidence in the case, and Supercell presented nothing from them.

Now, its fourth witness, Mr. Franzas, did know about the source code for Brawl Stars, but I think it's important what he said. As he testified, he testified that the code works exactly how Dr. Akl describes it.

And this is one example of that testimony where he said that a particular source code function had to be called in order for an enemy to hit -- be hit in the Brawl Stars game.

Nobody else walked through that door or showed up on the video screen from Supercell to talk about the most important evidence in the case.

So what did Supercell do instead? They presented a number of excuses on the question of infringement. They played some word games, they pointed you to some of the figures in the patents, and they ignored a very important instruction from the Court you just heard, and I'll walk through examples of each of those.

The instruction that you just heard relates to this question of comprising. And "comprising" is a term

09:44:42 that is in each of the patents.

09:44:44 What that means is that the patent claim lists
09:44:48 the -- the minimum checklist. All of the words in the
09:44:52 claim must be present for there to be infringement, but
09:44:56 there could be other things. So this is just the minimum
09:44:58 of what the product must do. If you do that minimum
09:45:01 checklist, you infringe.

09:45:02 And when you get back to the jury room and receive
09:45:04 your copy of the final jury instructions, I would like to
09:45:07 ask you to look on the top of Page 11 of those
09:45:10 instructions, because that's where this instruction is
09:45:12 found.

09:45:12 And there's an example that follows that says --
09:45:16 and His Honor just read it -- if you take a claim that
09:45:19 covers the invention of a table, if -- if the claim recites
09:45:23 a tabletop, four legs, and nails that hold them together,
09:45:25 then the claim covers any table that contains those
09:45:28 structures, even if it also has other things, like leaves
09:45:32 or wheels.

09:45:33 So, in other words, the table with the structure
09:45:39 in the claim infringes the claim. If you put wheels on the
09:45:46 table, it still infringes the claim. You don't get out of
09:45:49 an infringement by doing something else. If you infringe,
09:45:52 you infringe. If you infringe even once, you infringe. If
09:45:55 other times you don't infringe but you've infringed before,

you still infringe.

And if I get a speeding ticket, I can't go to court and say, well, I wasn't speeding yesterday. That doesn't get me out of a speeding ticket. It's the same thing with infringement. If you infringe, you infringe, even if sometimes you do other things.

And that's what we heard from Supercell in this case. For example, they spent a lot of time talking about Clash of Clans and how when you use the copy layout feature, sometimes you might get this pop-up, and that's because there's some buildings that aren't in your inventory that your clan mate may have.

Well, you heard there's plenty of times that this pop-up doesn't happen. And all those times there's infringement. The game infringes because it infringes, even if other times maybe it doesn't infringe. This pop-up is the wheels on Supercell's table.

And now, we don't agree with this. As Dr. Akl explained, the pop-up also infringes. But the point is they infringe, regardless. The pop-up doesn't always happen, and when it does, it's the wheels on their table.

The word games they played are maybe exemplified best by an argument they made that in Clash of Clans. When you apply the layout editor, after you've moved a building, that the building does not move. And they said that.

09:47:19 1 There's no moving in Claim 1 because the -- when you --
09:47:22 2 when you change the layout, it first goes blank and then
09:47:26 3 the new layout then comes up.
09:47:28 4 Well, even Dr. Claypool couldn't keep up those
09:47:32 5 word games. He said: They are moved to a different
09:47:34 6 location.
09:47:34 7 And so there's infringement of the '594 patent
09:47:36 8 based on Supercell's own expert.
09:47:41 9 On the battle patents, one of the contentions that
09:47:43 10 Supercell made was that you can select Elixir even if the
09:47:48 11 amount of -- sorry, you can select a card, even if the
09:47:51 12 amount of cost of the card is greater than the amount of
09:47:55 13 Elixir you have, and that that doesn't mean the less than
09:47:57 14 or equal to claim requirement.
09:48:05 15 But Mr. Ahlgren, its own game lead, didn't agree
09:48:06 16 with that. He said: You can only play a card when its
09:48:09 17 cost is less than or equal to.
09:48:12 18 And the basis for their argument otherwise is it's
09:48:14 19 saying that their own expert called Future Play, but even
09:48:17 20 he admitted Future Play rarely happens. You don't do it
09:48:21 21 all the time. Most of the time when you go to select a
09:48:24 22 card, if you don't have enough Elixir, it says: You don't
09:48:27 23 have enough Elixir. If you do, then it plays the card.
09:48:30 24 Only in a very rare situation because of the delay
09:48:32 25 between the phone and the server, the -- the game might let

09:48:35 you actually bring the card out, but even then, it waits to
09:48:40 drop it down until you have enough Elixir.
09:48:42 Well, Clash Royale infringes regardless of Future
09:48:46 Play. It infringes because they infringe. They infringe
09:48:48 every time Future Play doesn't come up. Future Play is the
09:48:52 wheels on their table. And that's a distraction from the
09:48:56 question of infringement.
09:48:57 On the sequence question, you heard some testimony
09:49:01 about this yesterday. Supercell tried to persuade you that
09:49:03 Clash Royale doesn't subtract before it adds, but you heard
09:49:08 Dr. Akl explain through the source code all they're
09:49:10 pointing to is a timer that tells you when the next Elixir
09:49:15 is going to come. That's what the code says. That's what
09:49:18 the best evidence shows. So there's infringement of the
09:49:22 battle patents, as well.
09:49:23 For the '655 donation patent, we spent a lot of
09:49:27 time looking at Figure 7b, which is a flowchart, and
09:49:27 particularly, the bottom of that. Again, we don't look at
09:49:30 figures for infringement. We look at the claims. Every
09:49:33 word in the claim must be present, and that's what we
09:49:36 compare to the product.
09:49:39 So it doesn't matter if the product exact -- works
09:49:43 exactly like a figure. It matters if it has every word in
09:49:46 the claims. And that's what we showed you.
09:49:47 All of their arguments about the '655 patent are

09:49:50 wheels. The argument that a player has to spend gold in
09:49:54 order to upgrade a card, that's wheels. It doesn't matter.
09:49:58 There's still infringement even if they have to do that.
09:50:01 The minimum checklist is met in Clash Royale.
09:50:04 And you'll see this instruction, as well, Page 19.
09:50:10 As His Honor just said, the only correct comparison is
09:50:13 between the products and the language of the claim, not the
09:50:16 figures. Not anything else in the patent.
09:50:20 There's infringement of the '655, as well.
09:50:21 Now, on the '873 patent, they point to the fact
09:50:27 that this brawler Shelly is only one of 39 brawlers. But
09:50:33 she's the first one every player uses. And the game
09:50:36 infringes because they use her and the cone that is the
09:50:38 shooting effective range. That's the table. These other
09:50:41 38 brawlers are the wheels.
09:50:42 Now, many of them also infringe because they have
09:50:44 the same type or a similar type of shooting range. But
09:50:52 Shelly is the table. That's what everyone uses. The game
09:50:53 infringes. They infringe because they infringe even if
09:50:57 they have wheels on the table.
09:50:58 They also argue that somehow touch doesn't mean
09:51:01 touch; that -- that there's not a touch operation because
09:51:04 you've actually got to touch and -- and drag your finger or
09:51:08 swipe your finger in order to move this cone around.
09:51:12 Well, that's touching. This is a touchscreen.

09:51:14 You touch the screen. Even if you end up dragging your
09:51:17 finger or swiping, that's still a touch operation. Touch
09:51:20 means touch. You touch the game to play it. And when you
09:51:23 do that, that cone moves exactly in the direction of your
09:51:27 finger. You saw that slow-motion video.
09:51:29 And the claim doesn't -- as the Court has
09:51:32 interpreted, the claim does not require that the cone
09:51:34 come -- that -- that the -- your finger be on your player.
09:51:38 It can be off to the right, as long as the cone from the
09:51:42 player moves in the direction your finger moves. And
09:51:44 that's exactly what Dr. Akl showed.
09:51:46 They also for this one focus on the figures. They
09:51:50 showed you this Figure 5 a lot with the targeting circle.
09:51:53 And I think they're doing that because they want you to
09:51:55 think that they found some old videos on YouTube that --
09:51:55 where they were some older shooting games that also shoot
09:51:55 targeting circles.
09:52:03 But the patent is not just relating to a targeting
09:52:05 circle. It's the claims that matter. Don't be fooled by
09:52:10 their arguments about the figures.
09:52:11 And so on the question of infringement, we will
09:52:13 ask that you check "yes" and find that Supercell infringes.
09:52:18 The question is: Do they infringe any of the
09:52:20 asserted claims? We believe that we've proven they
09:52:26 infringe all 10.

09:52:26 THE COURT: 17 minutes have been used.

09:52:28 MR. MOORE: Thank you, Your Honor.

09:52:29 But if they -- if you find even one infringed, then you should check "yes."

09:52:33 On the question of validity, they don't even argue this for the '594 patent. And as you heard, the patent -- the other four patents are presumed valid.

09:52:45 There is a higher burden of proof of clear and convincing evidence because of the experts at the Patent Office.

09:52:53 And what did we not see on the question of invalidity? They presented no source code for any of the prior art games that they relied on. They told you six different games invalidate the patents but showed you no source code. They didn't play any of those games themselves. And as Dr. Akl showed you, a lot of the claim elements are missing.

09:53:13 So for this questions, you should check "no" on the question of invalidity.

09:53:16 On the question of willfulness, the instruction the Court has just given is that there was willfulness if Supercell acts recklessly or with indifference to GREE's rights. And that's exactly what we've shown you. This is the timeline I've showed you in the opening statement.

09:53:35 After Supercell knew of the patent, it very

quickly started talking about the copy layout feature internally.

And then we saw the internal message -- excuse me -- then they -- we'll show you the internal message where they admit it was in GREE's patent, and then they added the copy layout feature.

Now, what was their party line? Their witnesses all sang from the same sheet of music. They all said, we don't monitor GREE or GREE's games of GREE's patents. Mr. Joas, Mr. Ahlgren, Mr. Franzas all answered the same questions.

But we showed you Plaintiff's Exhibit 68. They knew about the GREE '594 patent. They knew it covered the copy layout. And they went ahead and put it in the product anyway. And we showed you they knew of all of the other patents, as well, and they went ahead and kept infringing anyway.

There was some reference to the right to defend themselves, and anybody's wrongfully accused has that right. And that's certainly true. But we wrote them in 2016, and told them that they infringed. They didn't write back and say, well, let me show you how we're wrongfully accused. Let me defend myself now. Here's why we don't infringe. Here's why your patent are invalid. They ignored us.

09:54:50 And in 2019, when they signed a license in Japan
09:54:53 to all of our patents there, they didn't do the same thing
09:54:56 and say, well, let me now sit down and show you why we
09:54:58 don't infringe in the United States, why your patents are
09:55:01 invalid. They had that right to defend themselves. They
09:55:04 made us come here for them to present that. They could
09:55:06 have done that a lot earlier.
09:55:08 On the question of -- on the question of
09:55:11 willfulness, then, we would ask that you check "yes" to
09:55:14 that question.
09:55:14 On the question of damages, you heard that
09:55:23 Supercell makes a lot of revenue on these games in the
09:55:29 United States, almost $1.2 billion from the three games
09:55:34 just in the United States.
09:55:35 And you heard GREE's evidence on that. GREE
09:55:37 presented the best evidence that you saw in this trial on
09:55:41 damages, showed the features were important, players liked
09:55:44 them, they help engagement.
09:55:47 Dr. Neal testified to his survey.
09:55:48 Dr. Becker presented a detailed economic analysis.
09:55:51 He went through all the evidence, crunched a lot of data,
09:55:52 and presented precise royalties for each patent, royalties
09:55:56 between .7 and 2.4 percent, and a total royalty of between
09:56:04 18-and-a-half million and 24-and-a-half million, again,
09:56:06 depending for two of the patents on when you find the first

09:56:10 1 date the royalty should be begin, whether it's the
09:56:13 2 September 26 letter or whether it's the issue or grant date
09:56:18 3 of the patent.
09:56:18 4 And so those are the royalties that we will ask
09:56:22 5 you to fill in on the verdict form. You will see -- and
09:56:27 6 I'll move ahead to this. You will see on the verdict form
09:56:31 7 the question about what sum of money paid in cash would
09:56:34 8 compensate GREE for its -- for damages, and we would ask
09:56:38 9 you to write the larger sum that we presented,
09:56:41 10 $24,666,002.00.
09:56:47 11 Now, another question will be, what is the form of
09:56:50 12 damages? And that's a question of a lump sum or -- or a
09:56:54 13 running royalty. And on that question, we would ask that
09:56:57 14 you find a reasonable royalty for past sales.
09:57:01 15 And the reason for that, is that allows Supercell
09:57:05 16 to make a decision. Are these features really not that
09:57:09 17 valuable as they say? Because if that's the case, then
09:57:13 18 they can pay us for what they've done. And they can take
09:57:16 19 them out tomorrow, and they cannot pay another dime.
09:57:20 20 But if they are valuable, then they should keep
09:57:24 21 paying for their use of the features, because these patents
09:57:29 22 don't expire for another 14 years.
09:57:33 23 A lump sum would give Supercell 14 years of free
09:57:36 24 infringement. And we think the right result is that they
09:57:39 25 pay for what they use. And if they really don't think the

patents are valuable -- or the patented features are valuable, they can take them out of the products tomorrow.

You're going to hear from me again following Supercell's argument. And I will have the chance to address you one more time then and to thank you again for your service.

But for right now, thank you for listening to me and for listening to our case throughout this trial.

THE COURT: Thank you, counsel.

Defendant may now present its closing argument to the jury.

MR. SACKSTEDER: Thank you, Your Honor.

THE COURT: Mr. Sacksteder, would you like a warning on your time?

MR. SACKSTEDER: I would, Your Honor. Could you give me a warning at 15 minutes and five minutes.

THE COURT: I will.

MR. SACKSTEDER: Thank you very much.

THE COURT: Please proceed when you're ready.

MR. SACKSTEDER: May it please the Court.

Good morning, ladies and gentlemen. I haven't had the opportunity to speak directly to you before, though I think you've heard me speak to some of the witnesses in this case.

My name is Mike Sacksteder. I grew up in a small

09:58:51 town in Southern Indiana, and I have the great honor and
09:58:55 privilege to represent Supercell in this case. And I
09:58:57 wanted to, on behalf of myself and my team and Supercell,
09:59:01 thank you all very much. As the Court has said, as the
09:59:03 parties have said, your service is essential to making our
09:59:08 system work.
09:59:08 I did agree with one thing that you just heard, I
09:59:15 agree that patents are in the United States Constitution.
09:59:18 But you know what else is in the United States
09:59:21 Constitution, the right to a jury trial, the right to stand
09:59:25 up to a bully if you don't think you need to knuckle under.
09:59:30 If you think that you have defenses to their claims,
09:59:35 everyone has the absolute right to take those defenses, the
09:59:41 defenses that were called excuses by the Plaintiff,
09:59:46 defenses to a jury, and have a jury decide them. And that
09:59:52 also is in the United States Constitution, and that is very
09:59:55 important.
09:59:55 I have a lot to get through, so I'm going to move
10:00:01 pretty fast today, and I apologize for that.
10:00:04 I want to talk about the experts that you heard
10:00:08 from during the trial, and there was some discussion about
10:00:12 not hearing about source code.
10:00:14 Well, all three of Supercell's technical experts
10:00:16 reviewed the source code in this case, so they came and
10:00:20 testified that the source code supports exactly what you

see on the screen of the phone when the games are operating.

And so these three experts provided that testimony, which is what they're here for.

I also want to emphasize these are all experts in video games, and indeed in particular areas of video games that are relevant to the patents. And you heard from all three of them.

From GREE, you heard from Dr. Akl. He has taught some one-week-long summer camps on video games to children, but he doesn't have any professional video game experience in the industry.

What he does have experience with is talking to juries. He's done that in many, many cases, and so that's what he does for a living. He gets paid by the -- his university, but you heard him testify he got paid more money by GREE this year.

And when you consider his testimony, I want you to think about a couple of things. One, I want you to think about his demeanor on cross-examination. When I had the opportunity to question him about his theories, he acted differently than he did on direct. He started acting uncomfortable, and I think that's because he knew that we had caught him in some issues with his testimony.

And I also want you to think about the consistency

10:01:46 of his testimony because there were places where he said
10:01:49 one thing, and, in fact, spent a lot of time on one thing.
10:01:53 And then he said, oh, don't pay attention to that when we
10:01:55 pointed out the problems with what he was saying, and he
10:01:58 changed his story.
10:02:00 And that should weigh into your consideration of
10:02:02 his testimony.
10:02:02 All right. I'm going to go through
10:02:05 non-infringement of each patent followed by validity of
10:02:07 each patent, one patent at a time.
10:02:10 You heard in opening that you have to have
10:02:12 everything in the claim. I like to say that it takes one
10:02:15 needle to pop a balloon when it comes to patent
10:02:19 infringement. And you have to have everything, or there is
10:02:23 no infringement, and you heard that in your jury
10:02:27 instructions, as well.
10:02:28 Let's talk about the '137 and '481 patents first.
10:02:30 Those have been called the battle patents, and I think that
10:02:33 is a complete mischaracterization. They don't cover a
10:02:37 battle. They cover a very specific way of determining
10:02:39 whether you have enough Elixir or enough mana or enough
10:02:44 points to get another card. And you have to perform
10:02:49 exactly that specific method in order to infringe any claim
10:02:52 of that patent.
10:02:52 This is very important from the jury instructions.

10:02:56 If a particular sequence is required by the claims, the
10:02:59 accused products must follow that sequence. Must, not can.
10:03:06 Not, can sometimes and can't sometimes, must. Selection
10:03:10 must precede subtraction, and subtraction must precede
10:03:17 addition.
10:03:18 And Dr. Akl agreed that if that doesn't happen,
10:03:21 there is no infringement of all the asserted claims.
10:03:21 So he spent 21 minutes of his original direct
10:03:25 testimony walking you through a particular video that he
10:03:29 said showed infringement, 21 minutes. And then we put him
10:03:34 on cross-examination, and we took it frame-by-frame, and we
10:03:38 showed that it didn't happen. Remember, selection,
10:03:42 subtraction, addition.
10:03:43 And you see that in the Elixir bar at the bottom,
10:03:48 the Elixir is still going up. It's at 8 here. Dr. Akl has
10:03:51 already taken his finger completely off the screen, not
10:03:55 only has he selected the card from the tray below, he's
10:03:58 played it in the screen, and he's taken his finger off.
10:04:01 The Elixir is still going up. Selection, addition,
10:04:05 subtraction. Not selection, subtraction, addition.
10:04:08 And, finally, it even goes up to 9, it goes up the
10:04:12 next full number on the Elixir bar, and it's still adding.
10:04:18 So it finally subtracts after that, but it's the wrong
10:04:21 sequence, and he admitted that in his testimony.
10:04:23 And he said about this video that it was to

explicitly show the sequence of how things happen in the game, the sequence, explicitly show it. He spent 21 minutes on it. He said, yes. Then he saw that he had a problem with it.

So he went and said, oh, wait, the source code doesn't do that. But -- but Mr. Friedman showed you that, yes, the source code does do that, and he walked through it. I'm not going to have time to go through the complete loop here, but he walked through and showed, well, because the system is waiting for messages to be 20 ticks old that addition keeps happening before the subtraction happens.

And Dr. Akl then said, oh, wait, that is only a timer; that's not actually adding Elixir. He hadn't said that to you before, but he's wrong. And there's a problem with that testimony, as well, and we'll point that out.

So you have this period of time where you have selection, then there's a bunch of addition, and then there's subtraction, and that means that the claim is not satisfied.

So when he's talking about -- he tried to rehabilitate himself by saying, well, this is just a timer, and he looked at the source code. And he was asked by counsel for GREE: Is this related to the selection process? And he said: Yes, this is where you actually -- key word "deploy" the card, and it's being used, meaning

you put it in the field. Not when you select it out of the tray.

And he admitted when I cross-examined him that selecting and deploying are two different things, and he relied on the source code for deploying, not the source code for selecting. So he doesn't have evidence to support his position, and it isn't there.

Again, particular sequence required by the claims, and he says elsewhere: Selection has not been completed at this point, and the card is removed from the hand of cards at this point. So there's also another sequence that is selection and then removal. He says that selection has not been completed before removal. So it has to be one way or the other, and either way there's no infringement.

I'm not going to have a lot of time to go through invalidity. Mr. Friedman talked about the game Magic which was available in the 1990s. He talked about the game BattleForge, which was available in the 2000s, before 2010, and he combined them where he needed to. If there were issues raised by GREE with this, he -- he combined them and showed that it would be obvious to practice the claimed invention.

And the videos that we've seen, there's been some complaint about the videos, but those are prior art publications, just like anything else.

10:07:20 And one other thing that is not relevant and you
10:07:23 heard a lot of from GREE, is that, oh, Supercell didn't do
10:07:27 this or GREE didn't do this or the expert wasn't aware of
10:07:30 it. None of that matters. It has to have been available
10:07:33 to the public. And if it was on a YouTube channel, for
10:07:36 instance, it was available to the public.
10:07:37 Moving on to the '655 patent. First, you heard
10:07:43 late Friday from the inventor on the '655 patent, and he's
10:07:46 the only inventor. And, remember, at the beginning of the
10:07:51 trial, you were told that these were technologies that
10:07:55 added to the enhancement of the video games.
10:07:57 This inventor had no technical background
10:07:59 whatsoever, and he didn't really know how a server even
10:08:04 works, didn't know how a computer stores data. His
10:08:09 invention is not technology, ladies and gentlemen.
10:08:14 Non-infringement of the '655 patent. The claim
10:08:19 requirement is that there has to be display data for
10:08:22 selecting a first object from the possessed objects
10:08:26 possessed by the first user and selecting a second user
10:08:30 from the plurality of users.
10:08:31 And Dr. Zagal took you through this where you have
10:08:36 a donating user who has no choice. And Dr. Akl admitted
10:08:40 this, too. If somebody has requested a card, you don't get
10:08:43 to pick the card to give to the person, which is what the
10:08:45 claim is talking about. You just have to pick the person,

and their response to this is, well, it's -- you're picking the person, so you're picking the card, too. But that's not right. It says you pick a user and you pick an object.

Here they are picking a user, but they have no choice whatsoever what card to give to the second user.

The other issue with infringement here is that -- looking at Claim 7f, the second object is granted when the transfer information of the second user satisfies the condition. And the condition is you get -- you know, I think sometimes it said you need to get 800 cards before you can get an upgrade -- an opportunity to upgrade the card.

But all you get is the opportunity, and you have to pay gold. And if you don't have any, you have to acquire some in order to have this be even a possibility. So it doesn't happen when, which is what the claim says, the condition is satisfied.

A lot of people played FarmVille. Nobody is saying that that is not a well-known game. And it has, as you heard from Dr. Zagal, the same process.

And this on the -- on the right-hand side is actually what the named inventor on the patent said. This is my invention. You have somebody that buys a gift, gives it to somebody else. And if it satisfies a condition, then the somebody else, the recipient, gets something in

addition to that. And that's it. You know, that's what he disclosed. That's what FarmVille did. And FarmVille did also everything else that the patent lawyers later put into the patent claims.

And Dr. Zagal walked you through that process.

The '873 patent, the aim and shoot patent -- first of all, I would like to mention Shelly. Shelly is the first brawler.

You just heard an assertion that other brawlers also operate in the same way that Shelly does. There was no evidence -- you didn't hear anything from the witness stand. You didn't see any documents that said, oh, yeah, there are other -- other brawlers that operate that way. So they have 1 out of 38 brawlers that they are accusing of infringement. And Shelly does not infringe.

And here's why. And -- and this came up yesterday. This was in Dr. Akl's direct testimony and his cross-examination. The patent requires that the -- the -- that the frame is displayed in response to and based on the position of the first touch operation.

And Dr. Akl testified both in direct and on cross, and I confirmed it on cross because I was surprised he said it, one of the things he said was that when you move your thumb in a particular direction, then the cone appears in that direction. Did I hear you right?

10:12:08 Answer: Yes.

10:12:09 Well, the reason that matters is that Dr. Zagal
10:12:12 said: Well, position and direction in computer science are
10:12:15 two different things, and it has to be based on the
10:12:18 position of the first touch operation and not on the
10:12:21 direction.

10:12:21 And Dr. Akl admitted that it was based on the
10:12:25 direction, not the position. So there can't be any
10:12:29 infringement.

10:12:29 The other issue is that when you touch the screen,
10:12:32 you don't even see the frame. There has to be two
10:12:35 operations, a first and a second operation, before you even
10:12:38 see the cone that is supposed to be the frame in this case.

10:12:42 And then a third one, taking your finger off the
10:12:44 screen in order to file -- in order to fire.

10:12:48 So there was some discussion just now about
10:12:54 showing the -- the rifle scope, the target circles in the
10:13:02 '873 patent. But those show -- and I agree that -- that
10:13:06 the claims are what's important, but those show an
10:13:11 embodiment of the claims. So this is at least what the
10:13:14 '873 patent says that it covers.

10:13:16 When you have a frame indicative of a shooting
10:13:19 effective range, the patent says that frame is this target
10:13:23 circle. It is this rifle scope that probably many people
10:13:31 who have hunted have seen a rifle scope before. And we've

10:13:34 also seen it in these two games, Sniper vs. Sniper and Call
10:13:40 of Mini Sniper.
10:13:40 And the specific way that that scope is displayed
10:13:42 in those two prior art games and the specific way that the
10:13:48 shooting is done in those prior art games is exactly what
10:13:50 is claimed in the patent.
10:13:52 The thing that they say is missing is the server
10:13:58 apparatus to control to attack.
10:14:01 And so Dr. Zagal showed you the Sakurai patent.
10:14:07 And the Sakurai patent says: Well, you want to do this.
10:14:09 You want to have the control for things like this on the
10:14:12 server.
10:14:14 And so if a person of ordinary skill in the art
10:14:16 had both the game and wanted to make this a game over the
10:14:21 Internet and it had the Sakurai, which was concerned about
10:14:25 people hacking the game and cheating in the game, it would
10:14:28 have been obvious for those two to be combined.
10:14:33 And you got a little misdirection here with the
10:14:37 Sakurai patent because the Sakurai patent was actually
10:14:41 considered by the Patent Office in the prosecution of the
10:14:44 '873 patent. It's the only prior art reference that you
10:14:47 heard about that was considered by the Patent Office in any
10:14:51 of these.
10:14:51 And this one, remember, we're just using it for
10:14:55 (d) down below. It isn't the heart of the claim. It isn't

10:14:58 the shooting effective range. It isn't the frame. It
10:15:04 isn't the touch operations. It's just doing this on a
10:15:06 server.
10:15:07 And, of course, if the Patent Office considered
10:15:09 the Sakurai patent and they didn't have the games, they
10:15:14 wouldn't have anything to combine it with. And so it's --
10:15:18 it means nothing that the Sakurai patent was considered
10:15:21 because the games that are actually the heart of the claims
10:15:23 were not.
10:15:24 Moving on to the '594 patent. So the issue here
10:15:36 is that the claim that is asserted is Claim 2. Claim 2 is
10:15:44 asserted only against the copy layout feature of Clash of
10:15:49 Clans.
10:15:50 In the copy layout feature, you go to another
10:15:53 player's layout and you copy that layout, and then
10:15:57 according to everyone -- according to Dr. Akl, according to
10:16:00 the survey expert of GREE, the way that you actually apply
10:16:07 that layout is to set it as active. And that does not
10:16:14 happen. Dr. Akl admitted that.
10:16:15 So what happens instead is you go in -- when you
10:16:20 borrow somebody's layout, you go into village edit mode
10:16:24 because you have all these conflicts between your layout
10:16:27 and the layout that you're borrowing.
10:16:30 And when that happens, you can't set it as active
10:16:35 until you've fixed all this. And when you fix it, the

10:16:39 other thing in the claim is that the layout that you copied
10:16:42 has to be related to the other player.
10:16:44 And Dr. Akl said: Well, it's not really. It's
10:16:46 not really related to the other player -- or he came pretty
10:16:53 close to that.
10:16:53 And this is where you heard in the jury
10:16:55 instructions that the words of the claims matter.
10:16:59 And I asked Dr. Akl: Well, if you change the
10:17:02 buildings around -- he said: Well, yes, now I've made it
10:17:07 my own layout.
10:17:07 And I said: Well, it's not related to the other
10:17:10 player anymore.
10:17:11 And he said: I don't know.
10:17:13 They have the burden of proof. I don't know. And
10:17:16 then -- then I said: You don't have an opinion about that?
10:17:19 And he said: I don't know if we're arguing
10:17:21 semantics.
10:17:24 This is not semantics. This is the heart of
10:17:27 determining whether a patent is infringed, and Dr. Akl
10:17:30 didn't know.
10:17:32 Again, he said: I'm not sure. I'm not sure.
10:17:35 You heard about indirect infringement. A couple
10:17:44 of things. There cannot be indirect infringement unless
10:17:48 there was an underlying act of direct infringement. So for
10:17:54 all of these patents, there is no underlying act of direct

10:17:56 infringement, so there cannot be any indirect infringement
10:18:00 either.
10:18:00 Also, there has to be evidence that Supercell
10:18:03 actually intended for there to be infringement by somebody
10:18:07 else and knew of the patents at the time. And I don't
10:18:13 think they have proven any of that.
10:18:15 Okay. The reason -- this section on damages is
10:18:27 entitled Lack of Damages for a reason. In our view, there
10:18:33 are no damages. If you don't infringe, if there is a
10:18:37 patent that is invalid, you don't owe damages for that
10:18:40 patent.
10:18:41 And we've told you why Supercell does not
10:18:45 infringe. We've told you why the patents are not valid.
10:18:49 So you don't need to get to the issue of damages if you
10:18:54 agree with Supercell that there's no infringement or that
10:18:58 the patents are invalid.
10:18:59 But we have to talk about it because GREE is
10:19:04 talking about it, and you may have noticed they're asking
10:19:06 for quite a bit of money.
10:19:09 So the place to start in analyzing damages,
10:19:14 according to GREE's damages expert, Dr. Becker, is with
10:19:18 technology in the lawsuit that has already been licensed.
10:19:23 He says that it's the first question you should
10:19:26 ask in performing this analysis.
10:19:29 And we provided real-world licensing evidence;

10:19:38 three licenses with Thompson Licensing, and then the
10:19:42 licensing agreement in Japan between GREE and Supercell.
10:19:45 All of those, you'll note on the right, are for
10:19:53 lump sums. They're not for running royalties. That's the
10:19:56 way that in this industry it is typically done, and that's
10:19:59 the way that it was consistently done by Supercell and the
10:20:02 way it was done by Supercell and GREE when they negotiated
10:20:05 a license.
10:20:08 So, again, the GREE/Supercell license in Japan was
10:20:14 for a lump sum. It was for 1,079 patents and patent
10:20:22 applications, not the five that are asserted here. It's
10:20:26 for $4.5 million for that license, a perpetual license. It
10:20:32 doesn't matter if the patents doesn't expire in -- until
10:20:37 2034. It's for that whole period of time. It's a lump
10:20:40 sum. And GREE gave Supercell a license to those patents in
10:20:45 Japan for $4.5 million for more than a thousand patents.
10:20:49 So we heard some evidence about what Supercell
10:20:58 thought, for instance, the copy layout feature might --
10:21:02 what impact it might have on the game. But then we heard
10:21:05 evidence from two different surveys, surveys that were
10:21:08 performed one on behalf of GREE and one on behalf of
10:21:12 Supercell by survey experts who testified about surveying
10:21:19 game players and what kind of impact that would have had.
10:21:22 And Dr. Becker relied on Dr. Neal's survey, but he
10:21:30 only relied on half of it. He ignored the part that didn't

support his position. He just threw it away and said: Here's the good half that I want to rely on. And the other half, he threw it in the trash. He didn't use it at all.

And Dr. Becker said, for instance, that for certain patents, the value that he determined based on the survey, which is actual users after the feature is in the product, the value for that survey would have been zero, nothing. Not surprising in light of the evidence.

And the attempt to rebut that that you hear from GREE is, well, in Dr. Neal's survey, he said you would play -- you know, he asked whether you would play more or you would play less if the feature weren't in the game. And a lot of people said: Yeah, I'd play more if that feature weren't in the game.

And Dr. Becker looked at that and assumed that meant they would play more because they would have to spend more time setting up their layout or something like that. But that's not consistent with Dr. Klein's results.

In fact, Dr. Klein's results and Dr. Neal's results came out very similarly, but Dr. Klein asked a different question. And he asked how much it would increase or decrease the player's interest if the feature were taken out of the -- of the game.

And he found that it would increase -- in fact, a net positive increase in interest, for instance, for the

copy layout function if it were removed from the game.

So that's not, you know, this grinding stuff you heard before. That's people saying, you know what, I'd -- I'd happy if that happened. I would like it if this feature that GREE says is covered by its patent wasn't there. And more people said that than didn't.

And so, really, Dr. Neal's evidence, the part that was ignored by Dr. Becker when GREE calculated its damages, that was exactly consistent with that. They were saying we would play more if the feature weren't there because our interest would be increased.

THE COURT: 15 minutes remaining.

MR. SACKSTEDER: Thank you, Your Honor.

So here is the calculation that Dr. Becker did, for instance, for the '594 patent. And he actually figured that the net -- if you look at that line that says net overall reduction to player playing time in the game, it's actually a negative, but that actually means you would play more. So there would be a negative reduction. So people would play the game more if copy layout weren't in the game.

And it's supported by Dr. Klein's survey which says people would have higher interest in the game if the feature weren't there.

So the incremental revenue, that's the amount of

money that you would make if the feature weren't in the game or that is attributed to the feature being in the game is negative .01 percent. So it's a little bit -- you'd lose a little money if you had the feature in the game versus not having it in the game.

Again, Dr. Neal's evidence when Dr. Becker considered it, came out to a goose egg, came out to nothing, zero. And Dr. Becker didn't rely on that part. He swept it under the rug.

Another thing that Dr. Becker did that was inconsistent with the way surveys are normally used, and Dr. Neal said this himself, is that he didn't have any survey data for the '873 patent or for the '137 or the '481 patent, and, you know, sometimes you can't survey that, and Dr. Klein said, well, I couldn't survey the '137 patent because if you changed it so it didn't even get alleged to be infringed, nobody would even notice. It'd be such a small change to the game that it wouldn't matter at all.

But Dr. Becker, instead of doing that, he took surveys for the '655 patent, completely different feature. You know, card donation upgrades when you get to -- you know, when you get a certain level of cards in your deck versus a target on the screen or versus the way that you sort of measure the points that you need to play a card. Completely different. And he came up with different

10:26:19 1 royalty numbers for each one.
10:26:20 2 But he -- he tried to bootstrap that survey that
10:26:23 3 Dr. Neal did do on the '655 patent and apply it to patents
10:26:28 4 that were for different features, and for the '873 patent,
10:26:32 5 a different game.
10:26:34 6 That is not the kind of methodology that is
10:26:39 7 accepted in the industry, and you heard Dr. Neal himself
10:26:43 8 agree to that.
10:26:43 9 Now, there's been from GREE from time to time
10:26:56 10 discussion about the evidence that shows that GREE itself
10:26:59 11 was not using its patents, or when they tried to use them
10:27:02 12 in their games, the games were unsuccessful.
10:27:05 13 We are not asserting -- and Supercell is not
10:27:08 14 asserting that that has anything to do with whether the
10:27:11 15 patents are infringed or not. We're just saying if these
10:27:15 16 patents are so valuable to games, how come you didn't put
10:27:18 17 them in your own games? If these patents are so valuable
10:27:22 18 to games, how come when you did put them in your own games,
10:27:26 19 the games flopped?
10:27:28 20 That indicates, you heard, the value of the
10:27:32 21 accused feature compared to the rest of the game. And,
10:27:35 22 here, they have these inventions that they have patents on,
10:27:40 23 and those inventions when they were put in games, the games
10:27:44 24 didn't succeed. And often, they weren't even put in the
10:27:46 25 games.

10:27:47 A very wise person once told me that some of the
10:27:54 most important evidence in a trial is the evidence you
10:28:00 didn't hear.
10:28:02 We heard from Andrew Sheppard. He was the chief
10:28:06 executive officer of the GREE U.S. subsidiary, and he had
10:28:13 to make a difficult decision in 2017. He had to decide to
10:28:16 shut down the company and recommend that to GREE in Japan.
10:28:20 And you would think if anybody who had to do that,
10:28:23 and basically lost his job, if he thought it was
10:28:26 Supercell's fault, if he thought that Supercell had
10:28:30 somehow, you know, infringed patents and driven them out of
10:28:33 business or anything like that, he would have said it.
10:28:37 He didn't say that at all. You know what he said?
10:28:40 He said that Clash of Clans from Supercell was already a
10:28:46 successful game long before any of these issues came up.
10:28:50 You know, it was successful a couple years before he joined
10:28:53 GREE, and it was successful the whole time he was there,
10:28:56 long before copy layout was even added to the game.
10:29:00 And that indicates the value of the rest of the
10:29:04 game compared to this feature that people didn't really
10:29:10 want in the game any more than they wanted it out of the
10:29:12 game, and he said it over and over. You know, he said he
10:29:21 was very complimentary about Supercell and about Clash of
10:29:26 Clans, and he testified truthfully about that.
10:29:31 Talked about Clash of Clans having a strong

10:29:32 1 internally-created IP.
10:29:36 2 Yes, definitely Clash of Clans is strong.
10:29:39 3 Said the same thing about Clash Royale.
10:29:41 4 So you can also learn a lot from a company's own
10:29:48 5 documents and what they did. And GREE admired Clash of
10:29:54 6 Clans long before the copy layout feature was added, long
10:29:58 7 before the patent that they're asserting came about.
10:30:03 8 So here's a document from 2012 from a GREE
10:30:11 9 employee saying: My biggest concern is that CoC, Clash of
10:30:13 10 Clans, is a very, very well-done game from a game design
10:30:19 11 perspective.
10:30:19 12 Mr. Araki testified about DX-200, the document
10:30:22 13 that has Clash of Clans and GREE's Tenmega game, has their
10:30:31 14 characters side-by-side, and he testified that that
10:30:34 15 document came from Mr. Eda who's the named inventor on the
10:30:38 16 '594 patent.
10:30:38 17 GREE was looking at Clash of Clans long before,
10:30:50 18 doing exercises. Each specification other than that must
10:30:53 19 be compliant to the latest Clash of Clans.
10:30:55 20 They were attending industry conferences and being
10:30:59 21 startled by how well Clash of Clans was doing. This was
10:31:02 22 before this patent ever issued.
10:31:04 23 This document from 2015 talks about a member of
10:31:11 24 the team working on a deep-dive analysis on metastructure
10:31:17 25 on Clash of Clans and mentioned that he had analyzed it in

10:31:20 the past.

10:31:20 All right. We are almost to the end. There are a couple other issues. There were discussions about notice that was provided to Supercell and whether Supercell negotiated with GREE.

10:31:31 You've also seen a settlement agreement between GREE and Supercell in Japan. And I think it's reasonable to infer that that settlement agreement resulted from some negotiation.

10:31:47 Now, that settlement agreement actually happened when GREE had sued Supercell more than 30 times in Japan in GREE's home court, and most importantly in GREE's home court without a jury, right? There was no jury trial on patent cases in Japan. And so Supercell and GREE negotiated that agreement, again, for 1,079 patents and patent applications for $4.5 million.

10:32:22 Counsel walked you through the verdict form, and I want to take you through that, as well.

10:32:27 Supercell believes it has proven -- not only proven that it doesn't infringe but has certainly shown that GREE can't prove it, that Supercell does infringe any claim of the asserted patents.

10:32:41 We walked through all five of those patents and showed you that one pinprick that pops the balloon, and sometimes more than one, that not all the claim elements

10:32:53 are there in these limited patents, and so there can't be
10:32:57 any infringement. And if you find that, we'd like you to
10:32:59 check "no" on Question 1.
10:33:01 Supercell's experts have also walked you through
10:33:04 in great detail why the claims of each patent -- the
10:33:07 asserted claims of each patent are invalid. And we'd like
10:33:14 you on Question 2 to write in "yes" on each of those.
10:33:17 There's a question about whether Supercell
10:33:21 willfully infringed on the patents. Again, Supercell
10:33:23 received a letter that identified a bunch of Japanese
10:33:26 patents in 2016. There was negotiation that led to an
10:33:33 agreement in 2019. And so I don't think there's been any
10:33:38 proof, even if you find infringement, that any infringement
10:33:42 was willful. Supercell believed it had the right to take
10:33:45 this case to you, and it followed that process which the
10:33:50 Constitution guarantees.
10:33:51 THE COURT: Five minutes remaining.
10:33:53 MR. SACKSTEDER: Thank you, Your Honor.
10:33:54 So even if that -- you know, even if you find
10:33:56 infringement of any of the claims of the patent, which we
10:33:58 think you shouldn't, there was certainly no willful
10:34:00 infringement. And if you find no infringement, obviously
10:34:04 there can't be any willful infringement.
10:34:06 Question No. 4A, we hope you will leave it blank
10:34:12 because there's no infringement, the patents are invalid.

10:34:15 And if that's the case, then they get nothing.
10:34:21 They don't deserve anything. So we don't think there are
10:34:24 any damages for any amount in this case.
10:34:27 You've heard the evidence regarding the existing
10:34:31 license. I'm not going to do the math for you, but there
10:34:34 are -- you know, it's pretty easy to do.
10:34:37 You've heard the evidence from Mr. Bakewell about
10:34:40 the value or lack thereof of the patents compared to the
10:34:43 rest of the games. And so if you do find infringement of
10:34:46 any valid claims, then we leave it in your hands. That's
10:34:52 the way the system works. But we think that you should
10:34:55 leave this question blank.
10:34:56 Question 4B, again, if you do find any damages, it
10:35:01 should be a lump sum. You saw that every single license
10:35:05 that's relevant to this case has been a lump sum license.
10:35:08 That's the way they do it in this industry, and that's what
10:35:11 we ask you to do if you reach that point.
10:35:13 Again, we really thank you for this opportunity.
10:35:20 Supercell is relying on the jury system that's guaranteed
10:35:25 by the Constitution of this country, and we've seen the
10:35:29 attention that the jury has approached this case with, and
10:35:34 we leave the case now in your hands.
10:35:36 Thank you very much.
10:35:38 THE COURT: That completes Defendant's closing
10:35:43 argument.

10:35:43 Plaintiff may now present its final closing
10:35:46 argument.
10:35:48 You have 17 minutes and 10 seconds remaining,
10:35:51 Mr. Moore.
10:35:51 MR. MOORE: Thank you, Your Honor.
10:35:52 THE COURT: Would you like a warning on your final
10:35:54 argument?
10:35:54 MR. MOORE: Yes, sir. Would you mind giving me
10:35:57 five minutes and one minute?
10:35:59 THE COURT: I will.
10:36:00 MR. MOORE: Thank you.
10:36:18 THE COURT: You may proceed.
10:36:19 MR. MOORE: Thank you, Your Honor.
10:36:20 Ladies and gentlemen, I was hoping that
10:36:35 Mr. Sacksteder would focus more on what matters and not
10:36:38 more of the same.
10:36:39 Could we please go to Slide 47?
10:36:43 Because they've added some additional excuses to
10:36:49 the excuse sign that I showed you in the opening.
10:36:51 On the question of infringement, he just played a
10:36:53 lot of word games with you. He pointed to the wheels on
10:36:57 their table, things like Shelly the brawler, the fact that
10:37:01 that's the only brawler that people start with, the Future
10:37:05 Play issue, all the other issues I already covered.
10:37:08 And, you know, as -- as someone in his position

would do, he spent a lot of time criticizing Dr. Akl.

You heard Dr. Akl say in -- his deposition that Mr. Sacksteder took was 15 hours long, and I told you he spent five hours on the stand. And as you heard yourself, he has a tendency to speak quickly. So that's 20 hours of testimony. A lot of words.

They've got a lot of people there who go through all those transcripts and try to figure out, is there a statement that he said that he's not quite as accurate as he could be that we could then throw it up on a few slides and show it to you?

But you heard the entirety of his testimony. You heard the thorough analysis he did, and you shouldn't let the sound bites distract you that you just saw.

We also even saw a criticism of GREE's own inventor, Mr. Takeuchi, that somehow his patent is not worthy because he studied fashion design instead of computer networking.

Well, there's no rule in the Constitution or the patent laws that you have to have any particular educational background to be an inventor of a patent. You don't have to be a Ph.D. You can have any de -- any background if you have a good idea. But that's the type of arguments that they're making because they know that they infringe.

10:38:19 And they also make a lot of arguments about the
10:38:27 damages issues, and I want to go back to what their own
10:38:29 damages expert said. And that's Mr. Bakewell, who is
10:38:35 the -- you saw yesterday.
10:38:36 He said that the damages in this case are
10:38:40 de minimis. And I went and looked that up last night. And
10:38:45 here's one definition, too trivial or minor to merit
10:38:48 consideration.
10:38:50 He's essentially saying we've just wasted our
10:38:53 time. We've wasted all of your time being here for a whole
10:38:58 week on this case because it's trivial. We never should
10:39:01 have been here to begin with.
10:39:03 But Mr. Bakewell didn't actually present you any
10:39:06 financial analysis. He didn't do any economic analysis
10:39:10 like Dr. Becker did. He didn't crunch any numbers. You
10:39:15 recall Dr. Becker crunched million of lines of user data
10:39:21 and other financial data and then performed a number of
10:39:23 calculations taking all of that into account.
10:39:25 Mr. Bakewell didn't do any of that. He didn't
10:39:28 discuss any internal Supercell documents showing how
10:39:32 valuable these features are to Supercell. And he didn't
10:39:35 present a precise number to you as an alternative for you
10:39:39 to consider, besides the only economic analysis data in the
10:39:42 record.
10:39:42 But he did say that Supercell paid him

10:39:45 $400,000.00, and it did that for him to deliver these
10:39:50 talking points.
10:39:51 And one of the talking points he said, and you
10:39:53 just heard it from Supercell's counsel, is that somehow
10:39:57 some of these features would be better -- the games would
10:40:00 be better off without them.
10:40:02 The way they spinning -- they're spinning the
10:40:05 data, the survey shows that if you take copy layout out,
10:40:08 more players would -- would play it. And if you change the
10:40:12 design of the shooting cone in Brawl Stars, more players
10:40:15 would pay it.
10:40:16 Now, Supercell paid Mr. Bakewell 400,000, and I
10:40:21 don't know how much they paid Mr. Klein, but they paid a
10:40:23 lot of money for these people to tell them that.
10:40:26 Now, forget about this lawsuit. If you paid
10:40:28 somebody $400,000.00 to tell you how you could make your
10:40:28 product better, how you could get more people to play it,
10:40:34 and, therefore, earn more revenue, wouldn't you do it? But
10:40:37 have they done it? No.
10:40:39 They haven't made a single change. Copy layout is
10:40:41 still in the game. The Brawl Stars cone hasn't changed.
10:40:44 None of the other changes they've mentioned have happened
10:40:47 either. These are just excuses. This is not real
10:40:51 analysis. This is just an excuse and spinning the data
10:40:53 without telling you the whole story.

10:40:55 Dr. Becker explained how he treated the data the
10:40:59 players using -- using the copy -- without the copy layout
10:41:02 feature using the game more. They'd have to spend more
10:41:05 time grinding. You heard all of that evidence, and they
10:41:08 just want you to forget it.
10:41:09 Now, they also talk about GREE's own situation in
10:41:15 the market and GREE's own games. But the question here on
10:41:19 damages is, what is the value of the patented inventions to
10:41:23 Supercell? That's in the Court's instructions. What is
10:41:26 the value to the infringer? And that value is quite high.
10:41:32 They complain that we're seeking too high of a
10:41:35 royalty, but as you've heard, they make a lot of money on
10:41:39 their games; close to $1.2 billion in the last few years
10:41:43 alone just for these three games in the U.S. And some of
10:41:47 it is due to our technology.
10:41:48 And we did a little math. Just in 2019, the last
10:41:51 full calendar year where we have data, they made over $450
10:41:56 million just for these three games just in the U.S. That
10:42:01 equates to 1.25 million a day, over $52,000.00 an hour,
10:42:05 and -- may I approach, Your Honor?
10:42:06 THE COURT: You may.
10:42:07 MR. MOORE: $872.00 per minute that Supercell
10:42:32 makes just on these games.
10:42:34 Now, Mr. Bakewell, he said: Well, by de minimis,
10:42:37 I mean you should just award $5,000.00 per patent, no more

than that, in a lump sum.

Well, I did some math, and Supercell makes $25,000.00 every 28 minutes just in the U.S., just on these three games. So they made more than $25,000.00 in the time that you heard Mr. Sacksteder speak to you.

And the reason that they're saying that is they want to say, well, look at the license in Japan.

Now, we all agree on a couple of things. This license is just for Japan, not the United States. And Supercell's U.S. revenues, if I flip this chart over, you would see my large 7X. The U.S. revenues are seven times higher here than in Japan.

But there's one other thing that's important, and you heard some testimony on this.

What happened in Japan when GREE and Supercell signed that license with a lump sum? You will recall there's some testimony that in Japan during the lawsuits, Supercell removed the layout editor from Clash of Clans. And what happened? People were unhappy.

When they signed this lump sum license, what's the very next thing they did? They put it back. So all of these stories about the features not being valuable and the games would be better without them, they haven't done it. And in Japan they put it right back.

Well, I think for us that kind of goes in the

10:44:06 1 category of fool me once, shame on you; fool me twice,
10:44:10 2 shame on me. That's why a lump sum is not right here
10:44:12 3 because they say these patent features aren't valuable but
10:44:15 4 they haven't taken them out.
10:44:17 5 They want 14 more years of free infringement by
10:44:20 6 just paying $25,000.00 which they make in 28 minutes.
10:44:24 7 That's not fair. The fair result here is a running
10:44:27 8 royalty.
10:44:27 9 And, yes, nobody's going to deny it's a -- $24
10:44:35 10 million is a lot of money, but let's put it in context to
10:44:40 11 their revenues. We're asking for .7 percent of their Clash
10:44:43 12 of Clans revenues over the right period. Between the three
10:44:47 13 patents, we're asking for 2.7 percent for Clash Royale and
10:44:52 14 2.4 percent for Brawl Stars. They keep 97 to 99 percent of
10:44:57 15 their revenue. We're not saying the games aren't
10:44:59 16 successful for other reasons. They clearly are.
10:45:02 17 But our patented technology is in their source
10:45:05 18 code, and they should pay a fair running royalty for that.
10:45:08 19 And as I said earlier, if they're really not
10:45:12 20 valuable features, take them out and stop paying us. Put
10:45:15 21 your money where your mouth is. That's their decision.
10:45:19 22 Frankly, the $25,000.00 lump sum that they offered
10:45:23 23 us is insulting. It ignores the seven times U.S. revenues
10:45:30 24 that they have. If anything, if a lump sum were
10:45:32 25 appropriate here, you should multiply 4.5 million by seven.

10:45:36 That would be 31-and-a-half million dollars. That's the
10:45:39 scaling that would be appropriate. And that's the scaling
10:45:41 Dr. Becker talked about.
10:45:42 We're not asking for that. Let me be clear, we're
10:45:46 asking for a running royalty. But if you want to scale a
10:45:49 license, that's what Dr. Becker said. You have to account
10:45:51 for differences in the revenues. He talked about
10:45:54 differences in the legal systems.
10:45:55 So as much it is true there is no jury trial in
10:45:58 Japan, but there's also not very high patent royalties.
10:46:02 Dr. Becker cited a study where U.S. patent royalties in --
10:46:05 in various industries are typically 10 times higher than in
10:46:10 Japan. So the number in Japan is another side show,
10:46:14 another distraction.
10:46:14 We're here to talk about these five GREE patents,
10:46:18 the five you see on the table before you. And those five
10:46:22 patents give a lot of value to Supercell. The documents
10:46:27 show it. Their own internal messages show it. All of the
10:46:30 evidence shows that value.
10:46:32 And the instructions you have from the Court are
10:46:35 that you are to take into account the value of the patented
10:46:38 features to Supercell. And that's the right question -- or
10:46:41 that's the right answer on the question of damages.
10:46:43 Now, let me back up a little bit and go back to
10:46:53 where we started, which is the origins of the parties and

10:46:56 who you heard from.

10:46:57 You heard a lot of this, and I'll recount some of this evidence. And you heard from Mr. Araki, who's been here, as I said, the whole trial. Senior executive, board member, fourth or fifth employee of the company. Started coding when he was 8. Writes and creates a lot of video games, including ones that are still on the market today. And he was here the entire trial. So that's who you heard from from GREE.

10:47:21 From Supercell, the only person you heard from live in this courtroom is Greg Harper. He's also a senior executive at Supercell, also on the board of directors. And he came in very briefly Monday afternoon and talked to us about Supercell. And then when he was done, he walked right out that door.

10:47:38 And so let's see what they said about who did what. GREE was founded in 2004, Supercell in 2010. GREE's first mobile social game, Fishing Star, was in 2007. Supercell's in 2012.

10:47:55 GREE opened an office in the U.S. in 2011. Supercell did the same thing in 2012. GREE filed for its application for the '594 patent and then got that patent in 2017. That patent has copy layout, which Supercell didn't add to Clash of Clans until after the patent. And I showed you the exhibit where they knew -- they knew full well

about the patent when they did it.

So one of the reasons that our jury system is such a good system is it allows citizens like you to be judges of the facts, as His Honor has told you. You are judges of credibility.

What do we know from the witnesses? What do we know from their demeanors? What do we know from their motivations when they're testifying?

And one thing -- I want you to think back on Monday afternoon -- that Mr. Harper said and all their witnesses said this -- I showed you earlier --

THE COURT: Five minutes remaining.

MR. MOORE: Thank you, Your Honor.

He said that they don't monitor GREE. That's what he told you.

But then on cross-examination, we showed that wasn't correct. I showed him an interview with Mr. Araki that he had forwarded to the CEO. I showed him a document where they talked about one of the GREE U.S. games at Supercell. I showed him a document where CEOs -- Supercell's CEO was forwarding articles about GREE and calling it a giant in the market.

That's what the documents show, not what Mr. Harper said on his direct examination, only to be contradicted by his own writings and those of the CEO.

10:49:27 Now, Mr. Harper also said this case is very
10:49:29 important to Supercell. But if that's true, why hasn't he
10:49:32 been here the whole trial? Why did he march right out
10:49:37 after his testimony leaving his right-hand man to sit with
10:49:42 us and never take the stand and talk to you during the
10:49:46 trial. We were here all week. He was not. And that
10:49:48 speaks volumes about whether Supercell cares about this
10:49:50 case.
10:49:50 One other thing, and it happened fairly quickly,
10:49:54 but I think it's -- it indicates the difference between
10:49:56 these two companies.
10:49:57 Mr. Harper discussed some of the GREE games in the
10:49:59 United States, and he discussed -- and you also heard from
10:50:03 Mr. Sheppard that some of the games that GREE had released
10:50:07 in the United States are from a company called Funzio. And
10:50:12 Funzio is a company that GREE acquired. And, in fact,
10:50:15 Mr. Harper was impressed by Funzio, so he went to meet with
10:50:15 them to get some advice.
10:50:18 Well, why do I tell you about this now? Because
10:50:18 it tells you a lot about GREE. This is what happened when
10:50:21 GREE saw technology that it liked that someone else had in
10:50:26 the market. It invested. It bought the company. And it
10:50:29 worked with the engineers of those companies to release
10:50:31 games that were successful for a number of years.
10:50:33 Now, it's true that success did not last, and as

10:50:37 you heard from Mr. Sheppard, they weren't able to make it
10:50:40 last. It didn't work out. And they had to leave the
10:50:42 market.
10:50:43 But that speaks to GREE's character. When it sees
10:50:45 technology that someone else has that it finds interesting,
10:50:49 it does the right thing. It pays for it. It doesn't
10:50:52 trespass.
10:50:53 Supercell has acted differently. You didn't hear
10:50:56 a single word in this trial about Supercell having any
10:50:59 patents on its own inventions. They don't respect GREE's
10:51:04 property rights. And they don't respect the Patent Office.
10:51:06 They're telling you that, on this verdict form,
10:51:09 you should say that the Patent Office made a mistake nine
10:51:13 times; that three different examiners on the four patents
10:51:16 where invalidity is a question made nine different
10:51:20 mistakes. And Supercell doesn't respect this process and
10:51:22 this trial because they're not here.
10:51:24 Now, I want to talk for a moment about what this
10:51:29 case is really about -- about somewhat behind the curtain.
10:51:33 And that's another thing that Mr. Harper admitted to me on
10:51:37 his cross-examination.
10:51:38 You saw pictures of a bunch of Supercellians in
10:51:42 fields looking very happy. But they didn't tell you who
10:51:45 owns Supercell. You didn't hear that until Mr. Harper got
10:51:48 on the stand, and I asked him on cross-examination: Who

owns Supercell? And he said: It's a company called Tencent, a very large overseas conglomerate with interest in media, gaming, social media, with over 60,000 employees.

And so, again, we saw this slide. It's not the full story. I had to get Mr. Harper to admit the truth.

Now, I think at the beginning of Mr. -- Mr. Sacksteder's summation, closing argument, he called us a bully. That's what he said, that we're a bully. I'm not going to respond with name-calling to that.

But I want you to know who is doing the name calling. It's Tencent. They own Supercell. 60,000-person conglomerate, also in the gaming business from overseas, and they hold three of the five Supercell board seats.

THE COURT: One minute -- one minute left.

MR. MOORE: Thank you, Your Honor.

Why didn't you know that until Monday? It's Tencent pulling the strings. If they wanted Supercell to pay for a license for the U.S. patents, those three board members would have outvoted Supercell and said go ahead and do it. That's what's really happening here.

So this shows Supercell and Tencent's indifference to the entire process. Supercell refused to stop infringing in 2016 when we sent them the letter. They refused to stop infringing here in the United States when they signed a license in 2019. They refused to take the

infringing features out of their source code right now, even though they tell you they could do it easily and it would make it better. Instead it's a lot of excuses.

GREE has done the right thing to get patents to protect our innovations. Supercell has not. Now this is your opportunity to hold them responsible for those decisions.

Thank you, again, very, very much, ladies and gentlemen of the jury. It's been my honor to speak with you and to present this case to you.

Thank you.

Thank you, Your Honor.

THE COURT: All right. Ladies and gentlemen, that completes closing arguments for both Plaintiff and Defendant.

I'd now like to provide you with a few final instructions before you begin your deliberations.

You must perform your duty as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion.

All parties expect that you will carefully and impartially consider all the evidence, follow the law as I have given it to you, and reach a just verdict, regardless of the consequences.

Answer each question in the verdict form based on

10:54:34 the facts as you find them to be, following the
10:54:37 instructions that the Court has given you on the law.
10:54:39 Again, do not decide who you think should win the
10:54:43 case and then answer the questions to reach that result.
10:54:49 I'll remind you one more time your answers and your verdict
10:54:53 in this case must be unanimous.
10:54:55 You should consider and decide this case as a
10:54:57 dispute between persons of equal standing in the community,
10:55:01 of equal worth, and holding the same or similar stations in
10:55:05 life. This is true in patent cases between corporations,
10:55:10 partnerships, or individuals.
10:55:11 A patent owner is entitled to protect his or her
10:55:15 rights under the laws of the United States, and this
10:55:18 includes bringing a suit in a United States District Court
10:55:21 for money damages for infringement.
10:55:23 The law recognizes no distinction among types of
10:55:27 parties. All corporations, partnerships, other
10:55:31 organizations stand equal before the law, regardless of
10:55:36 their size or who owns them and are to be treated as
10:55:41 equals.
10:55:42 Now, when you retire to the jury room in a few
10:55:44 minutes to deliberate on your verdict, as I've told you,
10:55:46 you will each have a written copy -- an individual, written
10:55:50 copy of this charge that I'm giving you.
10:55:52 If you desire during your deliberations to review

any of the exhibits that have been admitted into evidence over the course of the trial, then you should give a written note signed by your foreperson to the Court Security Officer, who will bring it to me, and I will then send the -- that exhibit or those exhibits to you in the jury room.

Once you retire, you should first select your foreperson and then conduct your deliberations.

During your deliberations, if you should take a recess, follow all the instructions the Court has given you about your conduct during the trial.

After you've reached a unanimous verdict, your foreperson is to fill out those unanimous answers in the verdict form, sign the verdict form on the last page, date it, and then notify the Court Security Officer.

Do not reveal your answers until the time you have been discharged by me, unless I direct otherwise. And you must never disclose to anyone, not even to me, your numerical division on any question.

Any notes that you've taken over the course of the trial are aids to your memory only. If your memory should differ from your notes, you should rely on your memory and not your notes.

Notes are not evidence, and a juror who has not taken notes should rely on his or her own independent

recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If you want to communicate with me at any time during your deliberations, you should give a written message or a question in writing signed by the -- by your foreperson to the Court Security Officer, who will then bring it to me.

I will then respond to you as promptly as possible, either in writing or by having you brought back into the courtroom where I can address you orally. And I will always disclose to the attorneys in the case your question and my response before I answer your question.

After you've reached your verdict and I have accepted it and I have discharged you from your position as jurors, please understand you are not required to talk with anyone about your service in the case.

However, at that time, you will be free to talk with anyone about your service in the case, and that will be your decision and your decision only at that time.

I'll now hand eight printed copies of this final jury charge and one clean copy of the verdict form to the Court Security Officer to deliver to you in the jury room.

Ladies and gentlemen of the jury, you may now

retire and begin your deliberations. We await your verdict.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Please be seated.

Counsel, we have cell numbers to reach both trial teams in the event of a question from the jury or the return of a verdict. Consequently, you are welcome to wait off-site if you'd like. By the same token, you are welcome, in whole or in part, to wait here in the courtroom.

Thank you for your participation in this trial.

Awaiting either a note or a question from the jury or a return of their unanimous verdict, the Court stands in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

After approximately five hours of deliberation, we have our first note. And, actually, counsel, we have two notes, because before I could get you here on the first note, I got a second note.

And I'm going to give copies of these notes to

counsel, and then we're going to discuss them.

I have two copies of the first note and two copies of the second note. I'm going to hand those to the courtroom deputy.

And if a representative of each side will approach, we'll hand you two copies so that each side can look at the notes that have been received.

It should be one of each, Ms. Lockhart.

MS. SMITH: Thank you. Thanks.

THE COURT: All right. Let's discuss these briefly.

The first note says: Can we please have DX-71, first touch, and PTX-480, DX-1218, DX-1217, internal emails? Can we have the deposition of Jon Franzas?

The second note says: Can we see PDX-162, PDX-165, PTX-139?

If I'm reading it right.

Both of these are signed by Rachel Leathers, who is Juror No -- who is Juror No. 7, who is the apparent foreperson.

PTX-480, PTX -- excuse me, DTX-1217 and DTX-1218 appear to me to be what they're asking for in the first email. They don't put a "T" between the "D" and the "X" on 1218 and 1217, but they note that they're internal emails. And DTX-1217 and DTX-1218 are internal emails.

It appears to the Court that these three exhibit numbers correspond with what the jury is asking for.

I do not know what they mean by DX-71. It doesn't identify it as DDX or DTX, and I don't think there is a DTX-71, according to my quick look at the list of exhibits that have been used during the course of the trial.

So I think I will have to ask them for further clarification on what they mean by DX-71.

PDX-162 and 165 are clearly demonstratives. I don't think they're entitled to those.

They're not entitled to the deposition testimony of Mr. Franzas or anybody else, and I'll tell them that.

PTX-139, which appears at the end of the request in the second note, if I'm reading it right -- because the "X" is awfully small the way they've written it -- is a videoclip. And I don't know any way to present that to them, rather than if that is what they truly want to see, to bring them back into the courtroom and to play it on the screens in the jury box so they can see it again.

Now, I'm aware that both sides' IT people have closed up shop and left. I hope they are somewhere close by and we can get them back if that's what we need to do.

Those are my thoughts. I'd be happy to hear thoughts from counsel for Plaintiff and Defendant before we go any further.

Mr. Moore, do you have a --

MR. MOORE: Yes.

THE COURT: -- do you have a thought with regard to these two notes and what I've just indicated?

MR. MOORE: No, we -- we agree. We will need to check on the -- the numbers ourselves. But I agree with Your Honor about DX-71, that seems to be a little bit unclear.

And on the -- on the PDX-162 and 165, I certainly agree that the "D" indicates demonstratives. I'll have to double-check that, though. I think we might want to check to make sure they -- they didn't mean PTX. But I certainly -- I see what the note says, and I see it clearly says DX, and they -- they seem to understand, I think, the difference between that, given the other note.

THE COURT: Now, the first note says, DX-71, first touch. Does the notation "first touch" mean anything to you as far as possible clarification of what they're looking for?

MR. MOORE: I certainly -- I'd have to consult the list. I certainly understand, I think, what patent it relates to, but whether that's a -- a video or something else, I'm not certain off the top of my head. We can consult our exhibit list and -- and determine that.

THE COURT: All right. Mr. Sacksteder, do you

have a thought about this?

MR. SACKSTEDER: We are trying to determine whether it would be DDX-7.1, which would be a demonstrative, and we are trying to pull that up right now, Your Honor.

THE COURT: Well, if it is, they're not going to get a demonstrative.

MR. SACKSTEDER: Understood.

THE COURT: Let -- let me do this, counsel: I know that you got here as quickly as you could. But I've just given you these two notes, and you have complete copies of what I have.

I'm going to go off the record for a couple minutes and let you confer with each other here in the courtroom, and then when you've had a minute to talk, I'll come back and see if we have any additional clarity as to how to proceed, okay?

MR. SACKSTEDER: Yes, sir.

MR. MOORE: Thank you, Your Honor.

THE COURT: We're off the record.

COURT SECURITY OFFICER: All rise.

THE COURT: I'm not going anywhere.

(Off-the-record discussion.)

THE COURT: Then let's go back on the record.

Counsel, I've given you an opportunity off the

record to discuss both of the notes from the jury.

For clarity on the record, I'm going to take the first note I received, which begins with the phrase "can we please see DX-71, first touch," I'm marking that in the upper right-hand corner as Item 1 for identification.

And the second note that says "can we see PDX-162, PDX-165, PTX-139," I'm marking that in the upper right-hand corner as Item 2 for identification.

I'm handing both original notes from the jury to the courtroom deputy to be included in the records in this case.

I have discussed with you briefly, while we were off the record and after you've met and conferred and looked at your respective materials, what we collectively think the jury is asking for.

I'm going to ask Mr. Dacus and Ms. Smith to approach, and I'm going to hand you a copy of a proposed response, which I think is based on the consensus of what I've heard during our off-the-record discussion. And I want to read it, and then I'll take your comments on it.

This says: Response to Jury Notes 1 and 2. Members of the jury, in response to your two separate notes, I'm sending you these exhibits as requested, PTX-480, DTX-1218, DTX-1217.

D -- excuse me, PDX-162, PDX-165, and DX-71, being

DDX-7.1, are each demonstratives. They are not evidence. I cannot send them to you, as I indicated in my final jury instructions.

Next paragraph: The testimony -- the deposition testimony of Jon Franzas is something for which you will have to rely on your memories. This is the case with all witness testimony presented during the trial, both live testimony and deposition testimony. I cannot send that to you.

Next paragraph: PTX-139 is a videoclip which will be played to you again in the courtroom. I will bring you back in court -- into the courtroom for this single purpose presently.

Let me hear a response from both sides as to the accuracy of that note from your viewpoint.

MS. SMITH: No objection from Plaintiff, Your Honor.

THE COURT: How about from Defendant?

MR. DACUS: We have no objection, Your Honor.

THE COURT: All right. Do we have the IT set up to play that videoclip, and do we have it ready?

While you're working on a response to that question, I'm going to hand a signed copy of the written response that I just read to you and I gave you copies of previously, to the courtroom deputy to be included in the

record.

And I'm going to take a signed copy of that same written response with the three exhibits called out, being PTX-480, DTX-1217 and DTX-1218, and I'm going to send them back to the jury with, again, a signed copy of the written response by way of the Court Security Officer. And I'll give them a few minutes, and then we'll bring them in and show them this videoclip.

Any objections from either party?

MS. SMITH: No, Your Honor.

MR. DACUS: No, Your Honor.

THE COURT: All right. Mr. Fitzpatrick, if you'll deliver these to the jury.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: And if you will tell them I'll be bringing them back into the courtroom shortly. They should just leave their notebooks in the courtroom [sic]. They're only going to be in here long enough to watch a videoclip and then go back to the jury room.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: Are both sides satisfied that the clip on the screen I'm seeing now is the right clip, and it's prepared -- it's ready to be shown as it was shown during the trial?

MS. SMITH: Plaintiff is, Your Honor.

MS. KAEMPF: Can you play it?

MR. MORLOCK: Yeah, sure.

MR. SACKSTEDER: Defendants are, Your Honor.

THE COURT: Okay. If both sides are ready, let's back it up to the beginning, and then I'll bring in the jury.

All right. Mr. Fitzpatrick, please bring in the jury.

COURT SECURITY OFFICER: Yes, sir.

All rise.

(Jury in.)

THE COURT: Please be seated.

We're going to play PTX-139 for the jury, as requested.

As soon as this is over, ladies and gentlemen, I'll direct you to retire to the jury room again and continue your deliberations.

Let's play the videoclip, please.

(Videoclip played.)

THE COURT: All right. That completes the videoclip, PTX-139.

Ladies and gentlemen, you may now retire to the jury room and continue your deliberations.

COURT SECURITY OFFICER: All rise.

(Jury out.)

04:36:14 THE COURT: All right. Counsel, awaiting either another note from the jury or the return of a verdict, we
04:36:17 another note from the jury or the return of a verdict, we
04:36:20 stand in recess.
04:36:23 (Recess.)
(Jury sent home at 6:00 p.m. Court in recess until September 18, 2020.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes 9/17/2020
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20